

STATE OF ALABAMA)
COUNTY OF BALDWIN)

**RESOLUTION #2023-120
OF THE
BALDWIN COUNTY COMMISSION**

**RESOLUTION ALLOCATING AMERICAN RESCUE PLAN ACT FUNDS FOR BALDWIN COUNTY
COURTHOUSE ATRIUM**

WHEREAS, Baldwin County, Alabama, (the "County") has received American Rescue Plan Act State and Local Fiscal Recovery Funds ("ARPA funds"); and

WHEREAS, the Baldwin County Commission (the "Commission") is charged with ensuring that such funds are expended in accordance with state and federal law; and

WHEREAS, the Final Rule issued by the U.S. Department of Treasury on January 6, 2022, provides that certain expenditures incurred for capital improvements to mitigate the spread of COVID-19 are eligible uses of ARPA funds, including adaptations to existing public facilities to address mitigation needs; and

WHEREAS, current CDC guidance regarding COVID-19 mitigation efforts (updated January 26, 2023) include avoiding crowded areas by increasing space and distance and, as possible, moving indoor activities outside; and

WHEREAS, currently citizens seeking entry to the Baldwin County Courthouse located at 1 Courthouse Square, Bay Minette, Alabama (the "Courthouse"), to access government services are subjected to crowded conditions in the public entryway to the Courthouse while awaiting security screening; and

WHEREAS, as a result, the current configuration of the entryway renders it impossible to manage the flow of individuals seeking entry to the Courthouse to access government services, while complying with social distancing requirements necessary to mitigation efforts and security protocols needed to ensure citizens' safe and secure access to and use of this facility; and

WHEREAS, currently there exists some covered outdoor queuing areas adjacent to the Courthouse's public entryway; however, these structures are not sufficient to address socially distanced queuing needs, particularly during the conduct of jury trials and other activities during which public access to the Courthouse is substantially heightened; and

WHEREAS, the Commission has considered alternative adaptations to the exterior of the public entryway of the facility to address this issue and has determined that the most cost effective and proportionate alternative to address this issue is the construction of an additional covered queuing structure adjacent to the public entryway to the Courthouse that will allow citizens waiting to access the Courthouse to queue in a socially distanced manner, while being protected in part from the outdoor elements; and

WHEREAS, due to the interior layout of the entry floor of the Courthouse, there is no viable means of addressing this issue via internal renovations or adaptations; and

WHEREAS, the Commission has determined that the construction of a covered queuing structure adjacent to the public entry way to the Courthouse (the "Project") will adequately and proportionately address the harm described herein, while being more cost-effective than the construction of a fully enclosed structure that would accommodate socially distanced queuing for citizens waiting to access the Courthouse, while providing full protection from the outdoor elements; and

WHEREAS, the cost of the Project is estimated to be approximately \$948,830; and

WHEREAS, the Commission has determined that using a portion of the County's ARPA funds for the Project is an eligible, necessary, and reasonable use of these funds, and that the estimated cost of constructing this is reasonable and proportionate to the harm to be addressed; and

WHEREAS, to facilitate the implementation of the Project, the Commission desires to engage PH&J Architects to provide design and related services.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION AS FOLLOWS:

- 1) The Commission hereby authorizes the Commission Chair to enter into the design services agreement (the "Agreement") attached to this resolution with PH&J Architects, Inc., for the provision of design and related services necessary for the implementation of the Project.
- 2) Following the execution of the Agreement, the County Administrator is authorized to use a portion of the County's ARPA revenue replacement funds to cover costs related to the Agreement
- 3) The allocation and expenditure of ARPA funds for the purposes described herein shall be contingent on the continued appropriation and availability of ARPA funds for this purpose and in no event shall be used for any expenses not obligated by December 31, 2024, and expended by December 31, 2026.

IN WITNESS WHEREOF, the Baldwin County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 16th day of May, 2023.



Charles F. Gruber, Chairman
Baldwin County Commission

ATTEST:



Roger H. Rendleman
County Administrator





COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. JAMES E. BALL
2. MATTHEW P. McKENZIE
3. BILLIE JO UNDERWOOD
4. CHARLES F. GRUBER

May 16, 2023

Attn: Mr. Patrick Addison
PH&J Architects, Inc.
807 S. McDonough Street
Montgomery, Alabama 36104

RE: Resolution #2023-120 - Allocation of American Rescue Plan Act (ARPA) Funds for Bay Minette Courthouse Outdoor Atrium

Dear Mr. Addison:

The Baldwin County Commission, during its regularly scheduled meeting held on May 16, 2023, took the following actions:

- 1) Adopt *Resolution #2023-120* of the Baldwin County Commission allocating up to but not to exceed \$948,830.00 of ARPA funds for the Bay Minette Courthouse Outdoor Atrium; and
- 2) Approve and authorize me, as Chairman, to execute the AIA Professional Services Contract with PH&J Architects, Inc. in the amount of 6.5% of the construction cost for the Design of Bay Minette Courthouse Outdoor Atrium.

The period of performance for this *Agreement* shall begin on the date of execution of the *Agreement* by both parties and shall end upon the completion of the project or on December 31, 2026.

Please find enclosed *Resolution #2023-120* and a **fully executed original** *Agreement* for your files.

If you have any questions or need further assistance, please do not hesitate to contact me or Roger H. Rendleman, County Administrator, at (251) 937-0264.

Sincerely,

CHARLES F. GRUBER, Chairman
Baldwin County Commission

CG/jb Item GA3

cc: Roger H. Rendleman
Brian Underwood
Anna Buford

ENCLOSURE(S)

STATE OF ALABAMA)
COUNTY OF BALDWIN)

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WHEREAS, current CDC guidance regarding COVID-19 mitigation efforts (updated January 26, 2023) include avoiding crowded areas by increasing space and distance and, as possible, moving indoor activities outside; and

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WHEREAS, the Commission has determined that the construction of a covered queuing structure adjacent to the public entry way to the Courthouse (the "Project") will adequately and proportionately address the harm described herein, while being more cost-effective than the construction of a fully enclosed structure that would accommodate socially distanced queuing for citizens waiting to access the Courthouse, while providing full protection from the outdoor elements; and

WHEREAS, the cost of the Project is estimated to be approximately \$948,830; and

WHEREAS, the Commission has determined that using a portion of the County's ARPA funds for the Project is an eligible, necessary, and reasonable use of these funds, and that the estimated cost of constructing this is reasonable and proportionate to the harm to be addressed; and

WHEREAS, to facilitate the implementation of the Project, the Commission desires to engage PH&J Architects to provide design and related services.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION AS FOLLOWS:

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- 2) Following the execution of the Agreement, the County Administrator is authorized to use a portion of the County's ARPA revenue replacement funds to cover costs related to the Agreement
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IN WITNESS WHEREOF, the Baldwin County Commission has caused this Resolution to be executed in its name and on its behalf by its Chairman on the 16th day of May, 2023.



Charles F. Gruber, Chairman
Baldwin County Commission

ATTEST:



Roger H. Rendleman
County Administrator



AIA[®] Document B101[®] – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 6th day of February in the year 2023
(In words, indicate day, month and year.)

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

Baldwin County Commission
257 Hand Avenue, Annex III
Bay Minette, AL 36507

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

PH&J Architects, Inc.
807 S. McDonough Street
Montgomery, AL 36104

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

Courthouse Covered Entryway for Baldwin County Commission
PH&J #2302GV

ADDITIONS AND DELETIONS:

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

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

The Owner and Architect agree as follows.

TABLE OF ARTICLES

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- 7 COPYRIGHTS AND LICENSES
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- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

Expand the existing courthouse weather vestibule into a new security lobby for the courthouse, including a new exterior canopy for exterior waiting (shaded and out of the weather, with seating).

§ 1.1.2 The Project's physical characteristics:

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

TBD

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

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

The cost for the project is TBD

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

- .1 Design phase milestone dates, if any:

To Be Determined

.2 Construction commencement date:

To Be Determined

.3 Substantial Completion date or dates:

To Be Determined

.4 Other milestone dates:

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

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

Competitive Bidding by qualified bidders in accordance with the State Bid Law, Title 39 and Code of Alabama Section 39-2-2(3)(g)

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

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

No anticipated sustainable objectives

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

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

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

To be assigned to project

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

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

Only local authorities anticipated

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

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

.1 Geotechnical Engineer:

Not applicable

.2 Civil Engineer:

Not applicable

.3 Other, if any:

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

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

Architect will provide and assign field representation (on staff personnel) to the project once it has bid and a contract has been signed between the Owner and successful bidding contractor

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Blackburn, Daniels & O'Barr
Jack W. Daniels Jr., PE - REG #30036
R. Mark O; Barr, PE - REG #22214
8805 County Road 40 East / PO Box 100
Lowndesboro, AL 36752

.2 Mechanical Engineer:

Zgouvas, Eiring & Associates
Jay Eiring, PE - REG #23369
800 S. McDonough Street
Montgomery, AL 36104

.3 Electrical Engineer:

Gun & Associates, Inc.
J. Barry Gravlee, PE - REG #20431
Kenny R. Gunn, PE - REG #26988
3102 Highway 14
Millbrook, AL 36054

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not applicable

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

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

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.5.1 Commercial General Liability with policy limits of not less than one million (\$ 1,000,000.00) for each occurrence and two million (\$ 2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than one million (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide

narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than one million (\$ 1,000,000.00) each accident, one million (\$ 1,000,000.00) each employee, and one million (\$ 1,000,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million (\$ 1,000,000.00) per claim and three million (\$ 3,000,000.00) in the aggregate.

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

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

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

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

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

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

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

§ 3.3 Design Development Phase Services

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

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

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

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the

Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

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

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

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

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

§ 3.5.3 Negotiated Proposals

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

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

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

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

§ 3.6 Construction Phase Services

§ 3.6.1 General

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

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

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

§ 3.6.2 Evaluations of the Work

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

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the

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

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

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

§ 3.6.4 Submittals

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

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

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

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to

Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

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

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

SEE ATTACHMENT A, WHERE APPLICABLE

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	

§ 4.1.1.8	Civil engineering	
§ 4.1.1.9	Landscape design	
§ 4.1.1.10	Architectural interior design	
§ 4.1.1.11	Value analysis	
§ 4.1.1.12	Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13	On-site project representation	
§ 4.1.1.14	Conformed documents for construction	
§ 4.1.1.15	As-designed record drawings	
§ 4.1.1.16	As-constructed record drawings	
§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect's coordination of the Owner's consultants	
§ 4.1.1.21	Telecommunications/data design	
§ 4.1.1.22	Security evaluation and planning	
§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Fast-track design services	
§ 4.1.1.26	Multiple bid packages	
§ 4.1.1.27	Historic preservation	
§ 4.1.1.28	Furniture, furnishings, and equipment design	
§ 4.1.1.29	Other services provided by specialty Consultants	
§ 4.1.1.30	Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

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

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

See Attachment A

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

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

See Attachment A

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

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in

accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

(Paragraphs Deleted)

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

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

(Paragraph Deleted)

- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

(Paragraph Deleted)

- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Twenty Four (24) visits to the site by the Architect during construction
- .3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two (2) inspections for any portion of the Work to determine final completion.

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

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

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

§ 5.10 The Owner shall be responsible for the costs of its own legal, insurance and accounting services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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

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

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

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

§ 5.15 Within 15 days after receipt of a written request from the Architect for information needed to evaluate, give notice of, or enforce its lien rights, owner agrees to provide the requested information to the Architect to the extent such information is in the Owners possession, custody or control.

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

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

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

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses.

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

(Paragraph Deleted)

This Agreement shall be governed by the laws of the State of Alabama and proper venue for any action arising hereunder shall be in the Circuit Court of Baldwin County.

§ 8.2 Mediation

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

(Paragraph Deleted)

§ 8.2.3 Should the parties mediate, the Architect shall pay the mediator's fee and any filing fees. The mediation shall be held in Baldwin County, AL unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

.1 Termination Fee:

None (\$0.00)

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

1/4% of the cost of the work

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. Proper venue for any action arising under or related to this Agreement shall lie in Baldwin County Should any lawsuit or legal proceeding be commenced by either party against another party to this Agreement concerning this Agreement or the rights and duties of either in relation to this Agreement, the prevailing party shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its reasonable attorneys' fees.

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

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

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

.2 Percentage Basis
(Insert percentage value)

Architect's Basic Services for this project will be 6.5% of the construction contract amount

.3 Other
(Describe the method of compensation)

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

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

See Attachment A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

See Attachment A

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

See Attachment A

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

Schematic Design Phase	fifteen	percent (15	%)
Design Development Phase	twenty	percent (20	%)
Construction Documents Phase	forty	percent (40	%)
Procurement Phase	five	percent (5	%)
Construction Phase	twenty	percent (20	%)
Total Basic Compensation	one hundred	percent (100	%)

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

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

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

See Attachment A

Employee or Category	Rate (\$0.00)
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§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence, if approved by the Owner in advance;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;

(Paragraph Deleted)

- .9 All taxes levied on reimbursable expenses;
.10 Site office expenses;
.11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
.12 Other similar Project-related expenditures.

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

(Paragraphs Deleted)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

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

§ 11.10.2 Progress Payments

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

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

6 % per annum

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

Attachment A - PH&J Modifications to AIA B101-2017

Attachment B - ARPA Award Terms and Conditions

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

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

See Attachment A

- .3 Exhibits:

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

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this agreement.)

☐ Other Exhibits incorporated into this Agreement:

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

- .4 Other documents:

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

Certification of Compliance with Beason Hammon Act

PH&J E-Verify MOU

Certification of Compliance with Act 2016-312

Certification for Contracts, Grants, Loans and Cooperative Agreements

PH&J Insurance

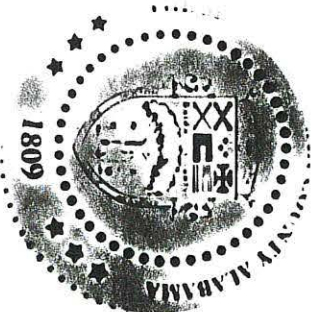
This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Charles F. Guber, Chairman
(Printed name and title)

ARCHITECT (Signature)

Patrick Addison, Vice President REG #4564
(Printed name, title, and license number, if required)



Init.

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User Notes:

(3B9ADA45)

MODIFICATIONS TO OA/AIA B101 – 2017 EDITION
Courthouse Covered Entryway for Baldwin County Commission
PH&J #2302GV
Dated February 6, 2023

12.1 Add to (or modify) Article 1, **INITIAL INFORMATION**, as follows:

1.3 (Modify) Digital Protocol (delete the second sentence in its entirety and insert the following): Email and FTP sites shall be an acceptable means of communication throughout the project. Text messages will not be considered an acceptable means of communication.

Drawings and specifications shall be transmitted in .PDF format. AutoCAD (.DWG), Excel (.XLSX), Word (.DOCX), etc. files that are used to create the drawings and specifications will remain the property of the Architect and will not be available.

Record drawings shall be transmitted in .PDF format.

Submittals shall be transmitted in .PDF format.

The site survey shall be transmitted to the Architect in .DWG format.

Architectural base plans sans border, title, seal, and extraneous information will be available to the contractor's subcontractors to help them in their preparation of submittals.

It is not anticipated that a building information model will be created for this project. If this should become a requirement, the contract shall be amended, the project schedule shall be adjusted, and the Architect's fee shall be adjusted.

1.3.1 (Delete) Building Model Information: Delete this paragraph in its entirety.

12.2 Add to (or modify) Article 2, **ARCHITECT'S RESPONSIBILITIES**, as follows:

2.5 (Modify) Insurance Until Termination: Delete the following sentence "If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9."

2.5.1 (Modify) Commercial General Liability: Insert (\$1M) for each occurrence and (\$2M) in the aggregate...

2.5.2 (Modify) Automobile Liability: Insert (\$1M) per accident...

2.5.5 (Modify) Employers' Liability: Insert (\$1M) each accident, (\$1M) each employee, and (\$1M) policy limit.

2.5.6 (Modify) Professional Liability: Insert (\$1M) per claim and (\$3M) in the aggregate.

12.3 Add to (or modify) Article 3, **SCOPE OF ARCHITECT'S BASIC SERVICES**, as follows:

3.2.5.1 (Modify) Sustainable Design Alternatives: It is understood that the consideration of sustainable design alternatives is a part of the normal design effort and is not a study within itself. It is not quantified and does not necessarily take precedence over program function, aesthetics, budget, etc. which are all important considerations of design.

3.4.2 (Modify) Governmental Review: Design Requirements of Governmental Authorities will be incorporated into the construction documents only as they are available at the time of document publication. Architect shall ensure that Contract Documents are in compliance with current guidelines as set forth by the Centers for Disease Control as it relates to COVID-19 mitigation and prevention measures.

3.4.3 (2) (Modify) Owner Contractor Agreement: Shall be *AIA Document A101-2017 Edition Standard Form of Agreement between Owner and Contractor* where the basis of payment is a stipulated sum.

3.4.3 (3) (Modify) General Conditions of the Contract for Construction: Shall be *AIA Document A201-2017 Edition* as referenced in 3.6.1.1.

3.5.1 (Modify) Construction Contract Delivery and Bidding and Negotiation Phase: The anticipated construction delivery process is a single lump sum construction contract, either negotiated or competitively bid. Should the Owner subsequently select another method, or if a Construction Manager, Program Manager or other Owner's agent is retained by the Owner, the Architect's fee shall be adjusted to accommodate the additional overhead. Consequently, an amendment to this contract will be prepared and signed.

Bid documents will be distributed to prospective bidders via website. All drawings, specifications, and addenda will be available for viewing on this website by bidders at no cost. Paper copies will be available to bidders at a cost to the bidders for printing, shipping and handling.

3.5.2.3 (Modify) Bid Documents Substitutions: In the first sentence, delete the following words, "as an Additional Service".

3.6.1.2 (Modify) Construction Phase Services: In the last sentence, after the word "contractor" and before the word "or", add "or owner".

3.6.1.2 (Modify) Temporary Supports: Also, the Architect shall have no responsibility for temporary supports used by the contractor for the construction process.

3.6.1.3 (Modify) Construction Phase Services: Append to the end of the last sentence "or if earlier, 60 days after the date of substantial completion of the work".

3.6.1.4 (Add) Construction Phase Services: The Architect shall provide to the Contractor one copy of construction documents in .PDF format from which the contractor shall reproduce (at his cost) all paper or electronic copies necessary to meet contract requirements and to facilitate construction. This requirement will include any sets (paper or electronic format) legally required for permitting.

3.6.2.1 (Modify) Evaluations of the Work: Last sentence item (3) shall read: “(3) known significant defects and deficiencies observed in the work”.

3.6.3.1 (Add) Certificate for Payment: As used herein, the word ‘certify’ shall mean an expression of the Architect’s professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

3.6.5.1 (Modify) Substitutions: The Architect will have authority to evaluate and approve substitutions made by the contractor pursuant to procedures set forth in specification Section 0160.

3.6.6.2 (Modify) Architect’s Inspections: The Architect’s inspections shall be conducted with the Owner to such an extent that the Owner is available to participate in the inspection.

12.4 Add to (or modify) Article 4, **SUPPLEMENTAL AND ADDITIONAL SERVICES**, as follows:

4.1.1.1 (Modify) Programming: It is the Owner’s responsibility to provide the program to the Architect, but the Architect may assist in the effort.

4.1.1.3 (Modify) Measured Drawings: The creation of measured drawings associated with projects involving substantial renovation or alterations of existing facilities will be the responsibility of the Architect.

4.1.1.8 (Modify) Civil Engineering: Civil Engineering will be the responsibility of the Architect. This service will be included in the Basic Fee.

4.1.1.10 Architectural Interior Design: Design and selection of finishes and colors will be the responsibility of the Architect with assistance from the Owner. This service will be included in the Basic Fee.

4.1.1.13 (Add) Clerk-of-the-Works: If a Clerk-of-the-Works is to be utilized on the project during the Construction phase, he will be employed directly by the Owner and will function under the Owner’s direction and control as “Owner’s Representative”. All communication between such clerk and the Contractor will be issued through the Architect. The clerk’s authority and duties will be communicated in writing to the Architect prior to his employment or assignment.

While such a clerk may assist the Architect in his administration of the contract, neither his employment, nor any act or undertaking on his part, shall create or extend any responsibility or obligation on behalf of the Architect for safety precautions and programs in connection with the Work, or for failure of the Contractor to carry out the work properly.

4.1.1.14 (Modify) Conformance Drawings: If required by the Owner, the Architect will incorporate into the construction documents addenda and changes subsequent to bidding. These construction documents will be used by the contractor as a convenience for construction of the work.

4.1.1.16 (Modify) Record Drawings: The duty to keep and prepare record drawings will be given to the Contractor via construction contract provisions.

4.1.1.21 (Modify) Telecommunications/Data Design: Design of the Data/Comm wiring distribution that is built into the building will be the responsibility of the Architect with assistance from the Owner and their IT personnel. This service will be included in the Basic Fee.

4.1.2 (Modify) Description of Supplemental Services: Occurs under 4.1.1

4.2.1.5 (Delete) Delete this item.

4.2.1.6 (Delete) Delete this item.

4.2.1.7 (Delete) Delete this item.

4.2.1.8 (Delete) Delete this item.

4.2.1.12 (Add) Default of the Contractor: Services necessitated by the default of the contractor.

4.2.2.1 (Delete) Delete this item.

4.2.2.2 (Add) Payment under this item if requested by the Architect is subject to the extent the Owner can recover the expenditure from the Contractor.

4.2.2.3 (Delete) Delete this item.

4.2.5 (Modify) Overall Services: The consideration of the overall services shall not negate the requirements identified in 4.2.3 and 4.2.4 construction phase services.

- 12.5 Add to (or Modify) the following to Article 5, **OWNER'S RESPONSIBILITIES**, as follows:

5.13 (Modify) Contract for Construction/Agreement Between Owner and Contractor: Shall be *AIA Document A101-2017 Edition Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment is a Stipulated Sum*. The accompanying General Conditions to this contract shall be *AIA Document A201-2017 Edition General Conditions of the Contract for Construction*.

5.16 (Add) Selection of Owner's Consultants: Any recommendation or other participation by the Architect in the selection or employment by the Owner of a soil engineering consultant, testing laboratory, insurance consultant, hazardous material consultant, or engineer who prepares surveys and topographic maps, shall not act to make the Architect responsible for the performance of these individuals or entities.

5.17 (Add) Rezoning and Replating: The Owner shall also be responsible for any necessary rezoning and replating.

5.18 (Add) Insurance Counsel: The Owner agrees that he is responsible for the insurance provisions in the final construction documents, and that any draft prepared by the Architect shall constitute only a convenient starting point for the final development of those provisions by the Owner's insurance adviser.

- 12.6 Add to (or Modify) Article 6, **COST OF THE WORK**, as follows:

6.1 (Modify) Sales Tax: If Sales Tax Savings Program is implemented by the Owner, the Construction cost employed to compute the Architect's fee shall include the amount of any sales or use tax that would have been applicable had the job been bid in the private sector.

6.1 (Modify) Contingencies and Allowances: Contingencies are monies held by the Owner for unforeseen conditions that may occur during construction. Allowances are monies included in the construction contract that the Owner directs to be expended during construction. Both contingency and allowance monies will be included as part of the Cost of the Work to the extent that they are paid for construction efforts, associated equipment, systems, etc., and the Architect has performed services to incorporate these items.

- 12.7 Add to (or Modify) the following to Article 7, **COPYRIGHTS AND LICENSES**, as follows:

7.3.1 (Delete) Delete the following sentence, "The Owner, to the extent permitted by law, further indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by a third party or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1."

12.8 Add to (or Modify) Article 8, **CLAIMS AND DISPUTES**, as follows:

8.1.4 (Add) Subrogation: To the fullest extent allowed by applicable laws, rules and regulations, the Owner further agrees that he will require in the Construction Documents provisions which will protect both the Architect and Owner from subrogation by the Contractor's insurers of workmen compensation, builder's risk and comprehensive general liability to the extent allowed by State law.

12.9 Add to (or Modify) the following to Article 9, **TERMINATION or SUSPENSION**, as follows:

9.1.1 (Add) Timely Payment: Owner agrees to pay all invoices from Architect not in dispute within 30 days of receipt. The Owner further agrees to call the Architect's attention to any charge or portion thereof held to be in dispute within two weeks of its receipt.

9.10 (Add) Termination: In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination then due.

12.10 Add to (or Modify) Article 10, **MISCELLANEOUS PROVISIONS**, as follows:

10.2 (Modify) Terms of Agreement: At the end of the first sentence add the following: "as amended, In the event of any inconsistency, ambiguity or discrepancy in the contract documents or between or among the contract documents, then the following shall be in order of precedence: (1) the addenda, amendments or modifications to the contract documents, and (2) the contract documents. If the conflict is between the drawings and the specifications, then the greater quantity or better quality shall be provided."

10.3 (Modify) Assignments of this Agreement: Modify paragraph by deleting all words after "consent of the other."

10.3 (Modify) Assignment of this Agreement: Modify the first sentence to read as follows: "The Owner and Architect, respectively, bind themselves, their agents, successors and assigns to the agreement."

10.10 (Add) Project Betterment: If, due to the Architect's error or omission, any required item or component of the project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the actual cost to add such item or component to the extent that such item or component would have been otherwise necessary for the project or otherwise adds value or betterment to the project. In no event will the Architect be responsible for any costs or expense that provides betterment, upgrade or enhancement of the project.

10.11 (Add) Exclusive Remedy: It is intended by the parties of this Agreement that the Architect's services in connection with the project shall not subject the Architect's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Architect, an Alabama corporation, and not against any of the Architect's employees, officers or directors.

12.11 Add to (or Modify) Article 11, **COMPENSATION**, as follows:

11.1 (Modify) Compensation: A "Master Plan/Building Study" fee of \$0.00 will be credited to the Owner on a prorated basis depending on the scope of the building or projects.

11.2 (Modify) Supplemental Services:

Hourly Rates: (Shall apply also to Paragraphs 11.3 and 11.7)

Current Hourly Rates: The following is the Architects hourly rate schedule. When fees are not based on a percentage of the work, the hourly rates are employed:

Principal Architect	\$250.00
Project Architect	\$190.00
Intern Architect	\$160.00
Interior Designer	\$160.00
Cost Estimator	\$165.00
Draftsman/CADD	\$145.00
Designer	\$145.00
Clerical	\$140.00
Field Representative	\$160.00
Specification Writer	\$155.00
IT System Designer	\$105.00
Primary Consulting Engineers (CSMEP)	\$285.00
Design Engineers	\$225.00
Draftsman/CADD	\$150.00
Clerical	\$100.00
Specification Writer	\$190.00
Cost Estimator	\$185.00

The Architect shall submit invoices, which reflect the actual hours worked, with appropriate hourly rates.

The published rates are **2023** rates and are subject to change according to the Architect's pay rate inflation.

11.3 (Modify) Compensation: See 11.2 Rates

The following fee increase is not applicable to this contract and project.

11.4 (Modify) Compensation: For Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 20%.

11.5 (Modify) Compensation for Basic Services:

The phases shall be as follows:

Schematic Design Phase	15%
Design Development Phase	20%
Construction Document Phase	40%
Procurement Phase	5%
<u>Construction Phase</u>	<u>20%</u>
Total Basic Compensation	100%

11.6 (Modify) Compensation: The last sentence shall read as follows: "Compensation paid in previous progress payments shall be adjusted based on subsequent updates to the Owner's budget for the cost of the work."

11.6.1 (Modify) Alternates: Compensation for design of work not constructed shall also include Alternates prepared by the Architect.

11.7 (Modify) Compensation: See 11.2 Rates

11.8.1.9 (Modify) Delete the words "Professional services and" for this item.

11.8.2 (Modify) Markup for Reimbursable Expenses: shall be 10%.

11.9 (Delete) Architect's Insurance: Delete this item.

11.10.1.1 (Modify) Initial Payment: There will not be an initial payment required for this project.

11.10.2.1 (Modify) Payments to the Architect: Delete the requirement for monthly billing and payment. Architect's billing and payment shall be made in proportion to the percentage of services performed as set forth under Paragraph 11.5. Billings may be made mid phase for the portion of services performed of that phase. Construction phase billing shall be billed in proportion to the percentage of the construction progress.

Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the rate of 6% per annum. In addition, the Architect shall be reimbursed for the cost (including reasonable attorney's fees) for collection of accounts.

12.13 Add to (or Modify) Article 13, **SCOPE OF THE AGREEMENT**, as follows:

13.2.2 (Delete) AIA Document E203-2013: Delete the reference to this document, as it is not provided for this project.

12.14 (Add) Indemnification: Architect hereby agrees to indemnify, defend and hold the Owner, its elected officials, officers and employees harmless from and against any and all claims, costs, expenses, losses and liabilities, including reasonable attorney's fees suffered, paid or incurred by the Owner to the extent caused by or arising out of or by virtue of the Architect's negligent performance of its obligations hereunder, including any injury or damage to property or to person, including death; and those resulting from the Architect's failure to pay any bills, invoices, costs, wages, taxes, or other charges owed by it to another. The foregoing indemnification obligation shall not apply to any claims, liabilities or expenses arising from intentional acts or intentional misrepresentation of the Owner. These indemnification obligations shall survive the expiration of the termination of this agreement.

ARPA AWARD TERMS AND CONDITIONS

I. Legal Terms and Conditions Applicable to Contract

Architect/Engineer agrees to comply with the requirements of section 603 of the American Rescue Plan Act, Pub. L. No. 117-2 (March 11, 2021) (the "Act"), regulations adopted by Treasury pursuant to section 603(f) of the Act, codified as 31 C.F.R. Part 35, and guidance issued by Treasury regarding the foregoing. Architect/Engineer shall provide for such compliance by other parties in any agreements it enters into with other parties relating to this project.

Federal regulations which may applicable to this contract may include, without limitation, the following:

1. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury may determine are inapplicable to this award and subject to such exceptions as may be otherwise provided by Treasury, including exemptions relevant to the use of revenue replacement funds, as applicable.
2. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension Non-procurement, 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 80 and Treasury's implementing regulation at 31 C.F.R. Part 19.
3. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
4. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
5. New Restrictions on Lobbying, 31 C.F.R. Part 21. Architect/Engineer must certify that it will not, and has not, used federal appropriated funds to any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C 1352.
6. Generally applicable federal environmental laws and regulations. Architect/Engineer must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). All violations must be reported to the County, Treasury, and the Regional Office of the Environmental Protection Agency.

Statutes and regulations prohibiting discrimination applicable to this award include, without limitation, the following:

1. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d, *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance;

2. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 USC §§ 3601, *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
4. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101, *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
5. Title II of the Americans with Disabilities Act of 1990, as amended (42 USC §§ 12101, *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Architect/Engineer agrees to comply, as applicable, with requirements of the Hatch Act (5 USC §§ 1501-1508 and 7324-7328), which limit certain political activities of state or local government employees whose principal employment is in connection with an activity financed in whole or in part by this federal assistance.

Architect/Engineer understands that making false statements or claims in connection with the use of ARPA funds is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

In accordance with 41 USC § 4712, Architect/Engineer may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

1. A member of Congress or a representative of a committee of Congress;
2. An Inspector General;
3. The Government Accountability Office;
4. A Treasury employee responsible for contract or grant oversight or management;
5. An authorized official of the Department of Justice or other law enforcement agency;
6. A court or grand jury; or
7. A management official or other employee of the County, Architect/Engineer, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

Architect/Engineers shall inform their employees in writing of the rights and remedies provided for whistleblowers in the predominant native language of the workforce.

Pursuant to Executive Order 13043, 62 F.R. 19217 (Apr. 18, 1997), Architect/Engineer is encouraged to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented, or personally owned vehicles.

Pursuant to Executive Order 13513, 74 F.R. 51225 (Oct. 6, 2009), is encouraged to adopt and enforce policies that ban text messaging while driving, and Architect/Engineer should establish workplace safety policies to decrease accidents caused by distracted drivers.

II. Terms and Conditions related to contractors, mechanics, and laborers:

The following terms and conditions must be built into any bid or resulting contract documents with any contractor engaged to perform work on the project:

Contractor must agree to the terms and conditions included above.

Contractor must use strong labor standards, including payment of a competitive and prevailing wage in the County.

Contractor must adopt and follow high safety standards and provide training based upon the appropriate licensures, certifications, and industry standards.

Contractor should prioritize local hiring consistent with the racial, gender, geographic, urban, rural, and economic diversity of the County.

For contracts/subcontracts over \$100,000, work performed by mechanics and laborers are subject to the provisions of the Contract Work Hours and Safety Standards Act (40 USC 3702 and 3704), as supplemented by 29 C.F.R. Part 5, including, specifically, safety standards, limitations on hours in a work week and overtime for any work spent over 40 hours, and proper documentation for all employees.

(1) A Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any laborer or mechanic, in any workweek in which the laborer or mechanic is employed on that work, to work more than 40 hours in that workweek, except as provided 40 USC Chapter 37; and

(2) when a violation of clause (1) occurs, the Contractor and any subcontractor responsible for the violation are liable—

(A) to the affected employee for the employee's unpaid wages; and

(B) to the Government, the District of Columbia, or a territory for liquidated damages as provided in the contract.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, PH&J Architects, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Patrick T. Addison, Vice President

Name and Title of Contractor's Authorized Official

February 6, 2023

Date

CERTIFICATE OF COMPLIANCE WITH ACT 2016-312

DATE: 2-6-2023

Re: Contract/Grant/Incentive (describe by number or subject):

The Agreement by and between PH&J Architects, Inc.
(Contractor/Grantee) and Baldwin County Commission (State Agency, Department or
Public Entity).

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of Vice President with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of Alabama's Act 2016-312.
2. In compliance with Act 2016-312, the contractor hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

Certified this 6 day of February, 20 23.

PH&J Architects, Inc.

Name of Contractor/Grantee/Recipient

By: 

Its: Patrick T. Addison, Vice President

The above Certification was signed in my presence by the person whose name appears above on this
6 day of February, 20 23.

Witness: 

Printed Name of Witness

State of Alabama)
County of Baldwin County)

CERTIFICATE OF COMPLIANCE WITH THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535, as amended by ACT 2012-491)

DATE: February 6, 2023

RE Contract/Grant/Incentive (describe by number or subject):

The Agreement by and between
PH&J Architects, Inc. (Contractor/Grantee) and
Baldwin County Commission (State Agency, Department or Public Entity)

The undersigned hereby certifies to the State of Alabama as follows:

1. The undersigned holds the position of Vice President with the Contractor/Grantee named above, and is authorized to provide representations set out in this Certificate as the official and binding act of that entity, and has knowledge of the provisions of THE BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT (ACT 2011-535 of the Alabama Legislature, as amended by ACT 2012-491) which is described herein as "the Act."
2. Using the following definitions from Section 3 of the Act, select and initial either (a) or (b), below, to describe the Contractor/Grantee's business structure.

BUSINESS ENTITY. Any person or group of persons employing one or more persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.

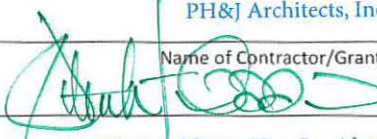
a. Self-employed individuals, business entities filing articles of incorporation, partnerships, limited partnerships, limited liability companies, foreign corporations, foreign limited partnerships, and foreign limited liability companies authorized to transact business in this state, business trusts, and any business entity that registers with the Secretary of State.

b. Any business entity that possesses a business license, permit, certificate, approval, registration, charter, or similar form of authorization issued by the state, any business entity that is exempt by law from obtaining such a business license, and any business entity that is operating unlawfully without a business license.

EMPLOYER. Any person, firm, corporation, partnership, joint stock association, agent, manager, representative, foreman, or other person having control or custody of any employment, place of employment, or of any employee, including any person or entity employing any person for hire within the State of Alabama, including a public employer. This term shall not include the occupant of a household contracting with another person to perform casual domestic labor within the household.

- ☒ (a) The Contractor/Grantee is a business entity or employer as those terms are defined in Section 3 of the Act.
- ☐ (b) The Contractor/Grantee is not a business entity or employer as those terms are defined in Section 3 of the Act.
3. As of the date of this Certificate, the Contractor/Grantee does not knowingly employ an unauthorized alien within the State of Alabama and hereafter it will not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama;
 4. The Contractor/Grantee is enrolled in E-Verify unless it is not eligible to enroll because of the rules of that program or other factors beyond its control.

Certified this 6 day of February 20 23.

PH&J Architects, Inc.
Name of Contractor/Grantee/Recipient
By: 
Its Patrick T. Addison, Vice President

The above Certification was signed in my presence by the person whose name appears above, on this 6 day of February 20 23.

WITNESS:


Jennifer Segrest
Printed Name of Witness