AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Agreement; Airport Architect; Gensler & Associates

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Airport terminal architect agreement through schematic design

Fiscal Impact:

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 8/28/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:

Reveiwed by: GUNCOUNTY1\mhoyt Discharge Date: 8/30/2019 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 8/30/2019

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5

Agenda Date: 9/3/2019

Revised April 2015

Standard Form of Agreement between Owner and Architect for a Large Complex Project

AGREEMENT made as of the _____day of _____ in the year_____,

BETWEEN the Architect's client, identified as the Owner:

Gunnison County Board of County Commissioners
200 E. Virginia Ave. Gunnison, CO 81231 Mr.
Matthew Birnie, County Manager

and the Architect:

M. Arthur Gensler, Jr. and Associates
1225 17th Street, Ste. 150
Denver, CO 80202
Jon Gambrill, Managing Principal

For the following Project:

The "Project" is the Renovation of the Gunnison-Crested Butte Regional Airport located at 519 and 711 Rio Grande Avenue, Gunnison, CO 81230.

The Project scope for purposes of this Agreement is limited to what is envisioned as the first phase of an eventual, multi-phased and comprehensive airport facilities and grounds renovation to be continued and undertaken in future years, as further funding will allow. This first phase is to be comprised of the renovation of certain elements of the existing Airport facilities including initial portions of the Terminal Building and associated site work. The professional services to be rendered by the Architect under this Agreement are Final Programming, Conceptual Design, and 100% Schematic Design of a complete terminal renovation and addition which will address the program elements identified in the 2019 Gunnison-Crested Butte Terminal Area Plan preferred alternative and provide for execution of a project in a phased manner, allowing for continuous operation of the terminal. Concept Design will take into consideration the 20-year planning deficiencies identified in the Terminal Area Plan to ensure compatibility with future projects. The scope is further described in Attachment "A".

The Owner and Architect agree as follows:

Table of Articles

ARTICLE 1: INITIAL INFORMATION Error! Bookmark not defined.

ARTICLE 2: ARCHITECT'S RESPONSIBILITIES **8**

ARTICLE 3: SCOPE OF ARCHITECT'S BASIC SERVICES **10**

ARTICLE 4: SUPPLEMENTAL AND ADDITIONAL SERVICES **13**

ARTICLE 5: OWNER'S RESPONSIBILITIES **16**

ARTICLE 6: COST OF THE WORK **18**

ARTICLE 7: COPYRIGHTS AND LICENSES **19**

ARTICLE 8: CLAIMS AND DISPUTES **20**

ARTICLE 9: TERMINATION OR SUSPENSION **21**

ARTICLE 10: MISCELLANEOUS PROVISIONS **22**

ARTICLE 11: COMPENSATION **23**

ARTICLE 12 SPECIAL TERMS AND CONDITIONS **25**

ARTICLE 13 SCOPE OF THE AGREEMENT **26**

ARTICLE 1: INITIAL INFORMATION

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

§1.1.1 The Owner's program for the Project:

(

The Owner's Initial Program is as established by the Terminal Area Plan preferred alternative, and further described in Attachment A.

§ 1.1.2 The Project's physical characteristics:

The Project which is described in Section 1.1.1 above is located within the City limits of Gunnison, Colorado (Terminal Building); and in Gunnison County outside of the City limits of the City of Gunnison itself. The site is

owned by the Owner. The site and existing Airport Terminal and other facilities are served by public utilities. Although currently not available, the Owner will provide site surveys, geotechnical and environmental studies and traffic studies as appropriate.

§1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
The projected construction cost of the project development (including any required hazardous materials abatement, existing building element demolition, renovation and adaptive reuse of the Terminal Building, and attendant geothermal-based mechanical system) is approximately $10-12 million Total Construction Cost (TPC) including provision for CM/GC fee, project General Conditions costs and Construction Contingency only (but not including Preconstruction Services Fee of the selected Construction manager/General Contractor). The projection of the construction cost is more fully detailed as the "*Gunnison-Crested Butte Regional Airport Fiscal Year 2019 Grant Program Construction Estimate – Funding Scenario Four*." The aforementioned estimate and Phasing Funding/Expenditure Schedule for Fiscal Years 2019 - 2022 is incorporated herein by reference as an attachment to this Agreement.

§1.1.4 The Owner's anticipated design and construction schedule milestones. See *30% Design Preliminary Schedule* included in Attachment A for details

* Owner Award & Issuance of Notice to Proceed	September 3rd, 2019
* A/E Begins Planning & Final Programming Work	September3rd , 2019
*A/E Issues Schematic Design Documents for IGMP	February 7th, 2020
*Owner solicitation of CM/GC	February-March 2020
* A/E & CM/GC Establish IGMP	May 2020
* A/E Issues New Building CDs for Permit Review	TBD
* CM/GC provides Project FGMP based on Permit Docs.	TBD
* CM/GC Mobilization on Site for any Abatement	TBD
* CM/GC Commences any Hazardous Abatement	TBD
* CM/GC Commences Building Component Demolition by	TBD
* CM/GC Commences Reno/New Construction	TBD
* Owner Occupy New Renovated Facilities	TBD

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

The construction procurement and delivery methodology to be employed in the development of the Project will be by engagement of a single Construction Management/General Contractor (CM/GC, hereinafter referred to as "Contractor"), and constructed and delivered via a Cost of the Work Plus Fee agreement, with attendant General Conditions (form AIA 201 as modified by Owner), between the Owner and Contractor.

The Architect will, as a service to be rendered during the timeframe of Final Programming and Conceptual Design Phases, assist the Owner with the administration of a qualification and fee-based selection process for a single General Contractor to join the project team through a Construction Manager/General Contractor format under a total Final Guaranteed Maximum Price delivery method for any hazardous materials abatement and the demolition components in the existing facilities, the delivery of the Project.

Procurement and construction delivery of the Project will be via selection of a single managing CM/GC, with the required active advice of the Architect in the CM/GC selection administration process, on the basis of CM/GC qualitative experience and capabilities, as well as fee and general conditions-based competitive proposals pertaining

to both pre-demolition preconstruction, demolition, renovation, construction and building systems commissioning phase services, within a single, Final Guaranteed Maximum Price (FGMP) provided by the CM/GC.

The CM/GC selection process will include a construction budget update estimate produced by the CM/GC as a component of its competitive proposal, based upon the 100% Schematic Design documents produced by the Architect; the scope of this contract Then, upon selection of the CM/GC, the CM/GC and the Architect, under a second phase contract, will work together with the Owner to reconcile the Schematic Design scope and the budget offered by the CM/GC awardee, all within the Owner's Approved Budget for the cost of the Work (Construction Cost). Once this collective effort is complete, the CM/GC, hired by the Owner, will propose an Initial Guaranteed Maximum Price (IGMP) for the Project. The Owner's written acceptance of the IGMP will represent the completion of the Schematic Design Phase.

Thereafter, as the design further evolves, the Architect and CM/GC will work together to provide certainty that the Final Guaranteed Maximum Price (FGMP) proposed by the CM/GC, as based upon the Permit Documents, remains within the Owner approved IGMP. If at any time the current estimate of the cost of the Work or projected FGMP is not within the approved IGMP, the Owner may direct the Architect and CM/GC, under provisions included in their respective agreements, to work together and with the Owner to bring the Project back within the IGMP. This additional effort, if necessary, and to the extent that any redesign might be necessary to keep within budget, shall be performed by the A/E team at no additional cost to the Owner.

The CM/GC will be hired and engaged by the Owner via contract with the Owner, and brought into the project planning, cost estimating and scheduling process during the design phase. Both the Architect and the CM/GC, under the provisions of their respective agreements with the Owner, will be accountable to the Owner to work together in support of a team approach toward fulfillment of the Owner's goals and objectives for the Project specifically in terms of cost, schedule, quality, safety, and product performance, and all other Owner expressed parameters of overall project success set forth by the County Manager.

One major core objective of the design phase work of the Architect, in conjunction with the pre-demolition and preconstruction services phase work of the CM/GC, will be the ongoing assurances of an accurate projection of Project cost of the Work to be developed and refined through progressive cost estimates undertaken by the CM/GC with the input and assistance of the Architect in providing a clear basis for accurate cost projection at various stages of design. Establishment of an accurate projection of eventual cost of the work as a significant capital cost of the Project, through the teamwork of the Architect and CM/GC, will form the basis for the Owner to, in turn, establish the amount of capital to be raised to cover the cost of the Project, and is an imperative related to an establishment of the CM/GC's Final GMP for the Work of the full eventual project scope of existing building component demolition, any required hazardous abatement, facilities renovation, new construction delivery and site development, etc.

§1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
It is anticipated that there may be a need for separate bid packaging for the project, particularly for achievement of early commencement of any hazardous materials abatement, existing facility component demolition, structural protection and exterior envelope preparation of the to-be renovated Airport Terminal Building, site preparation and foundation construction relative to seasonal building constraints. Multiple bid packaging for purposes of potentially early procurement of long-lead items or more extensive fast-tracking of the Project is to be a consideration undertaken during planning and evolution of design.

The number and type of bid/procurement packages initially contemplated is as follows:

Bid Package No. 1-Hazardous Materials Abatement
Bid Package No. 2-Existing Facility Structure Protection/Reinforcement
Bid Package No. 3 -Site Preparation, Utilities, Excavation & Foundations
Bid Package No. 4 -Geothermal Field Design (Facility Design coordinated with Geotherm. Consultant)
Bid Package No. 5 -Facility Core & Shell Renovation/New Construction
Bid Package No. 6-Facility Interior/Occupant Finishes
Bid Package No. 7-Site Development, Paving, Parking & Landscaping, etc.

Note: Provision for long-lead item procurement package for potential finishes and components, security systems, security hardware, control and communications systems and other technical components may be required in addition to the above to achieve Occupancy Milestone.

§1.1.7 Other Project information:

Environmental Considerations: During typical winter months, the Project location routinely experiences low winter temperatures sometimes in the range of -30 to -40 degrees Fahrenheit. High altitude winter conditions include snow and ice with little natural melting between weather events.

Groundwater Considerations: The site water table depth has not been determined, however it is not believed to be significantly problematic. Confirmation of this factor is to occur prior to commencement of further programming.

Historic Preservation Considerations: None.

Final Planning, Programming & Overall Design Considerations: The renovation and adaptive re-use of the Airport Terminal and related facilities will be further planned, programmed and designed as one integrated facility.

Other Considerations: It is anticipated that the renovated and new facilities will be designed and constructed to a LEED Standard, but that formal certification will not be pursued. Any certification the Owner intends to seek shall be determined at a later date, during the design phase.

§1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

Matthew Birnie, County Manager

Gunnison County Administration 200
E. Virginia Ave.
Gunnison, CO 81230
(970) 641- 0248

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

Gunnison County Manager:	Matthew Birnie, County Manager Gunnison County Administration 200 E. Virginia Ave. Gunnison, CO 81230

(970) 641-0248

Gunnison-Crested Butte Regional Airport Manager	Rick Lamport, Airport Manager Administrative Offices 519 Rio Grand Ave. Gunnison, CO 81230 (970) 642-7388
Gunnison County Sustainable Operations Director:	John Cattles, Gunnison County Sustainable Operations Director 200 E. Virginia Ave. Gunnison, CO 81230 (970) 641-8560

§ 1.1.10 The Owner will retain the following consultants and contractors:

.1 Cost Consultant:
The Owner shall select a Contractor (CM/GC) at the completion of Schematic Design. This Contractor shall provide cost consulting and estimating services to the Project. (NOTE: Cost Estimates/Cost Models performed during Final Planning, Programming and early Design Phases are the responsibility of the Architect.)

.2 Scheduling Consultant:
The Owner shall select a Contractor (CM/GC) at the completion of Schematic Design. This Contractor shall provide scheduling consulting services to the Project. A Design Phase Schedule has been submitted by the Architect that shows a complete, critical path timeline for accomplishment of the Project final planning, programming and design phases, all within project milestones established in Section 1.1.4 and 1.1.6. of this Agreement. See Attachment E -Architect's Project Schedule.

.3 Geotechnical Engineer:
The Owner shall engage Geotechnical Engineering services separately under direct contract with the Owner.

.4 Construction Testing & Inspection Agent: The Owner shall engage a Testing & Inspection Agent for services during the Construction Phase under direct contract with the Owner.

.5 Other, if any:

The Owner may elect to engage a consultant to perform a Phase 1 Environmental assessment of certain areas of the Airport property.

The Owner may elect to engage the services of a Sustainability/Green Building Consultant separately.

The Owner may elect to engage the services of a Building Systems Commissioning Consultant separately.

§1.1.11 The Architect identifies the following representative, as Architect of Record, in accordance with Section 2.3:
Jon Gambrill, Managing PrincipalM. Arthur Gensler, Jr. and Associates
1225 17th Street, Ste. 150
Denver, CO 80202

§1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.l and 1.1.12.2:

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:
See Attachment A to this Agreement

.2 Mechanical Engineer:
See Attachment A to this Agreement

.3 Electrical Engineer:
See Attachment A to this Agreement

.4 Civil Engineer:
See Attachment A to this Agreement

.5 Other Consultants: As required for a complete program and design, unless listed as Owner's Consultants in Section 1.1.10 of this Agreement
See Attachment D to this Agreement

§ 1.1.12.2 Consultants retained under Additional Services:

As approved in writing by the Owner, and as set forth in Attachment A hereto.

§ 1.1.13 Other Initial Information on which the Agreement is based:
Attachment A (Proposal for Architectural Services, 30% Design Architectural/Engineering Services scope of Services, 30% Design Preliminary Schedule, Design Fee Schedule)

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, shall recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation in accordance with the terms as referenced in this Agreement along with the terms of the Project's AIA A-201 General Conditions as modified by the Owner. The Architect shall provide prompt written notice to the Owner if they become aware of any errors, omissions, or inconsistencies in such services or information.

The Owner and Architect recognize that the AIA A-201 General Conditions may be modified through negotiations with the Contractor. The Owner shall provide the recommended modifications to the Architect for review and comment. The Architect shall be obligated to comply with the final AIA A-201 General Conditions as executed with the Contractor.

ARTICLE 2: ARCHITECT'S RESPONSIBILITIES

§2.1 The Architect shall provide the professional services as set forth in this Agreement. Architect certifies that Architect is a registered professional architect or engineer licensed to practice in the State of Colorado. Pursuant to Colorado law, any civil, structural, mechanical, or electrical plans and specifications must be prepared by a registered professional engineer or a registered architect, whichever is appropriate, and who is licensed to practice in the State of Colorado. Architect agrees to notify Owner should Architect's license or registration status change. Architect certifies that Architect and Architect's employees and agents are eligible to work under federal, state and local immigration laws and regulations.

§2.2 The Architect has represented through their proposal and interview process that it has experience in similar projects and the Architect possesses expertise in these project types. Architect shall certify that he has reviewed the standards contained in all applicable regulations and used the best professional judgment and reasonable care consistent with the practice of architecture and/or engineering in the State of Colorado in executing the Construction Documents. The Architect's or engineer's seal and signature on the Construction Documents shall indicate certification of compliance with this section. The Architect shall perform its services consistent with the professional skill and care provided by architectural firms with similar expertise and experience with projects involving public sector airport facilities similar to the contemplated Project.

§2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The representative shall be a registered professional architect licensed to practice in the state of Colorado.

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

§2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

§2.5.1 Comprehensive General Liability with policy limits of not less than One Million Dollars ($ 1,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage of Two Million Dollars ($ 2,000,000.00).

§2.5.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than One Million Dollars ($ 1,000,000.00) combined single limit and aggregate for bodily injury and property damage.

§2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies and is no less than Two Million Dollars ($ 2,000,000.00).

§2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than Five Hundred Thousand Dollars ($ 500,000.00), to be increased if necessary to comply with Colorado and Federal law to adequately protect all labor employed by Architect.

§2.5.5 Professional Liability: The Architect promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts (indicated in the following table) as minimum coverage or such other minimum coverage as determined by the Owner or to the extent required by law, particularly Colo. Rev. Stat. § 12-25-311. The policy, including claims made forms, shall remain in effect for the duration of this Agreement and for at least eight (8) years beyond the completion and acceptance of the Work. The Architect shall be responsible for all claims, damages, losses or expenses, including reasonable attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, but only to the extent that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Architect, any consultant or associate thereof, of anyone for whom Architect shall submit a Certificate of Insurance verifying said coverage at the signing of this Agreement and also any notices of Renewals of the said policy as they occur.

Minimum Coverage per Claim	Minimum Coverage in the Aggregate
$5,000,000	$5,000,000

§2.5.6 The Architect shall provide to the Owner certificates of insurance, at the signing of this agreement, evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. The Certificates of Insurance will also state that 30-days prior to any cancellation of such insurance Owner shall receive, in writing, a Notice of Cancellation.

§2.5.8 Nothing in or required by this Agreement shall be construed to be a waiver of governmental immunity provided by the Colorado Governmental Immunity Act, pursuant to Federal law, or otherwise.

§2.5.7 Indemnity: Approval of any Construction Documents by Owner shall not constitute and shall not be deemed to be a release of the responsibility and liability of Architect, its agents, employees, and subcontractors, for Construction Documents which are constructed in accordance with the Standard of Care, nor shall such approval be deemed to be an assumption of such responsibility and liability by Owner for any defect in the Construction Documents prepared by Architect, its agents, employees, subcontractors, or consultants, it being the intent of the parties that the approval by Owner signifies Owner's approval of only the general design concept of the improvements to be constructed. In this connection, ARCHITECT SHALL, DURING THE CONSTRUCTION OF THE PROJECT AND FOR A PERIOD OF TEN (10) YEARS AFTER SUBSTANTIAL COMPLETION, INDEMNIFY AND HOLD HARMLESS OWNER AND ALL OF ITS OFFICERS, TRUSTEES, AGENTS, REPRESENTATIVES, SERVANTS, AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY, OR EXPENSE, INCLUDING ATTORNEY'S FEES INCURRED BY OWNER ON ACCOUNT OF DAMAGE OR DESTRUCTION TO PROPERTY AND INJURIES,
INCLUDING DEATH, TO ANY OR ALL PERSONS, INCLUDING INVITEES AND EMPLOYEES OF THE OWNER, CONSTRUCTION MANAGER, ARCHITECT, OR SUBCONTRACTORS AND OF ALL OTHER PERSONS PERFORMING ANY PART OF THE WORK, THAT IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER, COMMITTED BY THE ARCHITECT, OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL; provided and except, however, that this indemnification provision shall not be construed as requiring Architect to indemnify or hold Owner harmless for any loss, damage, liability, or expense on account of damaged property or injuries, including death to any person, which may arise out of or may

be caused by any act of negligence or breach of obligation under this Agreement by Owner or Owner's employees or agents, except Architect.

ARTICLE 3: SCOPE OF ARCHITECT'S BASIC SERVICES

§3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services. These include the consultants listed in Section 1.1.12 of this Agreement and any additional consultants as necessary to complete the following services:

1. Project Final Planning and Programming
2. Site Planning
3. Landscape Design
4. Full Service Architectural Design & Specification
5. Envelope design, water/ vapor management
6. Civil Engineering, including storm water management as related to the project
7. Structural Engineering
8. Mechanical and Plumbing Engineering including coordination of Geothermal Systems Design
9. Electrical Engineering
10. Fire Alarm Design (Performance based, Design/build)
11. Fire Suppression Design (Performance based, Design/build)
12. Final Program and Conceptual Design Estimating
13. Acoustical Engineering
14. Detailed Design Phase Scheduling
15. Utilities Design and Coordination
16. General Signage and Graphics Design
17. Tele/Data, Security, and Audio/Visual Systems Specification/Integration
18. Public Direction Signage, Graphics & Display Equipment
19. Lighting Design
20. Cost estimating through the Programming and Conceptual Design phases.
21. Security Hardware and Software Systems Design/Integration (Performance based, Design/build)
22. Modular and/or manufactured building component systems, if any
23. Facility Security and Threat Protection
24. Low Voltage Systems Design (Performance based, Design/build)
25. Building Interior Finishes & Systems Specification/Integration
26. Public Assembly/Holding Area & Administrative Offices Finishes & Systems
27. Baggage Handling, CUTE System & Misc. Equipment & Systems Specification/Integration
28. Building Component/Site Demolition Specification
29. Others as may be mutually identified and approved by the Owner.

The Owner, with the Architect's assistance, shall select a qualified Contractor to assist in the Preconstruction Phase activities related but not limited to; cost, schedule, value, life-cycle cost, constructability and sustainability/green building analysis. The Architect and Contractor shall work closely together during the Preconstruction Phase to meet the Project goals, including but not limited to cost, schedule, and quality.

§3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend on-site Project meetings, communicate with members of the Project team and report progress to the Owner with weekly updates, which updates/meetings will occur every other week on-site.

§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 the accuracy and completeness 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 to the Owner a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required for (1) document coordination between Architect and their consultants (2) printing time (3) the Owner's review (4) the performance of the Owner's consultants, and (5) for approval of submissions by authorities having jurisdiction over the Project all in a format acceptable to the Owner. Cost of design work performed by the Architect on any of the successive phases of design prior to Owner approval of the design work of the previous design phase, in order to maintain the Project schedule, shall be at the risk of the Architect, with any cost of subsequently necessary re-design borne by the Architect.

§3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Scheduling Consultant or Contractor and participate in developing and revising the Project schedule as it relates to the Architect's services.

§3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Architect shall not exceed them, except for reasonable cause and only with the Owner's prior written approval.

§3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval. In the event the Architect and Owner cannot come to agreement on a substitution the Architect must provide the Owner a written explanation of the substitution and reasoning for non-acceptance.

§3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall review laws, codes and regulations applicable to the Architect's Services and the Project and be responsible for the same, related to the Design Services. The Architect's design of the Project shall meet requirements imposed by governmental authorities having jurisdiction over the Project.

§3.1.8 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.

§3.1.9 The Architect shall assist the Owner in the creation of a separate Owner's Final Program for the Project. . The Architect shall work closely with the Owner to complete the Final Planning and Programming Phase resulting in "Owners Approved Final Program" which shall be the basis for all services going forward on the Project, and, specifically, as the Design Problem Statement to be Solved by and in Design of the facility. The Architect shall be responsible for developing the Final Program's Cost Estimate and Project Schedule. The Final Program, including the attendant budget and schedule, will, upon Owner's review and formal written approval of them, be adopted as a reference document. Upon such adoption by the Owner, the Project will then proceed into the Conceptual Design Phase, under the further services provided by the Architect.

§3.2 CONCEPT/SCHEMATIC DESIGN PHASE SERVICES

§3.2.1 Based on the Owner's Approval of the Final Program as set forth in paragraph 3.1.9, the Architect shall review and compare the goals objectives of the Final Program, and other information furnished by the Owner, against all laws, codes, and regulations applicable to the Architect's services.

§3.2.2 The Based on the Owner-Approved Final Program, the Architect shall initiate and prepare an evaluation of the Final Program, and attendant schedule, budget for the Cost of the Work, and the proposed procurement and delivery method and other Initial Information, each in terms of the other, to ascertain the final and full requirements of the Project. The Architect shall notify the Owner of (l) any inconsistencies discovered in the information evaluated, and (2) other information or consulting services that may be reasonably needed for the Project.

§3.2.3 The Architect shall present its evaluation to the Owner and shall discuss with the Owner any alternative approaches or elements to design and construction of the Project as may be deemed potentially beneficial, including the feasibility of incorporating the intended renovation of the airport facilities, any modular and/or manufactured building components or systems, and/or environmentally responsible design approaches or alternatives. The Architect shall reach a final and complete understanding with the Owner regarding the requirements of the Project.

§3.2.4 Based on the Owner's Approval of the Final Program and the final and complete Project requirements agreed upon with the Owner, the Architect shall prepare and, present for the Owner's approval, several but not less than three (3) preliminary (concept) designs for the building facility and Project as a whole, illustrating the scale and relationship of the Project components.

§3.2.5 Based on the Owner's approval of a preliminary design Concept of the Owner's selection, the Architect shall prepare Schematic Design Documents for the building facility and the Project as a whole, for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including individual preliminary site plans and preliminary building plans, sections and elevations; and may include some combination of study
models, perspective sketches, or digital modeling. Preliminary selections of major building systems including mechanical and electrical systems and construction materials shall be noted on the drawings or otherwise graphically, or described in writing. A targeted building energy use intensity ("EUI") rating based upon preliminary selections of mechanical and electrical systems and envelope shall be developed for the Owner's consideration. Performance of the Agreement shall include the Schematic Design process through completion of all obligations under the terms of this Agreement.

§3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation and location on the site, together with other considerations based on program considerations and aesthetics, in developing building facility architectural aesthetics, building style and component designs that are consistent with the Owner's approved Final Program, schedules and budget for the Cost of the Work of the total Project. The Owner may obtain other environmentally responsible related design services under Article 4.

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

§3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant (Contractor). The Architect shall meet with the Contractor and the Owner to present and review the Schematic Design Documents with them for purposes of maximizing their understanding of the design intent.

§3.2.7 Upon receipt of the Cost Consultant's (Contractor's) cost estimate, at the conclusion of the Schematic Design Phase, the Architect, if necessary, shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to achieve compliance with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall make the necessary revisions to the Schematic Design documents prior to commencing work on the

Design Development Phase of the Project. Once the Schematic Design scope and the Contractor's cost estimate are aligned, and the Contractor's cost estimate is within the Owner's Approved Budget, the Contractor shall present an Initial Guaranteed Maximum Price (IGMP) for the Owner's review toward written approval. Moving forward thereafter, the Architect and Contractor shall work together to assure that the further evolution and phased progress of the design remains within the Owner's Approved Budget while maintaining the intended scope of the Work of the Project and design intent.

ARTICLE 4: SUPPLEMENTAL AND ADDITIONAL SERVICES

§4.1 Supplemental and Additional Services listed below are not included in Basic Services but may be required for the Project. Regardless of any other provision in this Agreement or the Contract Documents, no Additional Services will be performed without prior written authorization from the Owner, which Owner may withhold in its discretion. Architect will not be entitled to make a claim for Additional Services to the extent such services are necessitated by errors or omissions by the Architect. Architect agrees that written notice to Owner of the circumstances giving rise to Additional Services shall be provided within thirty (30) days of the circumstances and shall be a condition precedent to payment for Additional Services.

When the Architect is listed within the "Responsibility" section of this Article 4.1.1 through 4.1.33, these services shall be considered Basic Services to this Agreement and shall be performed without additional compensation.

Basic Services:

§	Services	Responsibility	Location of Service
		(Architect, Owner Not Provided) **Location of Service Description**	**Description (Section 4.2 below or in an exhibit attached to this document and identified below)**
4.1.1	Planning and Final Programming	Architect	
4.1.2	Multiple engineering discipline preliminary & final designs	Architect	
4.1.3	Existing facilities observations	Architect	
4.1.4	Site Evaluation and Planning	Architect	
4.1.5	Building information modeling	Architect	
4.1.6	Civil, Utilities & Site Engineering	Architect	
4.1.7	Landscape Design	Architect	
4.1.8	Architectural & Interior Design	Architect	
4.1.9	Value/Life-cycle Cost Analysis	Architect	

4.1.10	Detailed conceptual cost estimating	Architect	
4.1.11	Coordination of Owner's consultants	Owner	
4.1.12	Telecommunications/data & Communications Design	Architect	
4.1.13	Security Evaluation and Planning	Architect	
4.1.14	Environmentally Responsible Design	Architect	
4.1.15	"LEED" Certification Compliant Design	Architect	
4.1.16	Historic Preservation Compliant Design	N/A	
4.1.17	Furniture, Furnishings, and Equipment Design	Architect	
4.1.18	Hazardous Materials Testing	Owner	
4.1.19	Hazardous Materials Abatement Design & Specification	Owner	
4.1.20	Existing Facility Component Demolition Design & Specification	Architect	
4.1.21	Renovation & Adaptive Re-use Design & Specification/Structural Analysis	Architect	
4.1.22	Geotechnical Investigation & Design	Owner	
4.1.23	Materials Testing & Inspection	Owner	
4.1.24	Other Project Specific Services/Design	TBD	

§4.2 Insert a description of each Additional Service below if not further described in an exhibit attached to this document:

None. Additional Services, if required shall be added to this Agreement by written Amendment.

§4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, including but not limited to vague, incomplete, inconsistent or uncoordinated design documents, any Additional Services provided in accordance with this Section shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule provided that the Owner has given written authority prior to the work being done.

§4.3.1 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 any Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a significant change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;

.2 (Intentionally deleted);

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations enacted after the completion of the Instruments of Service;

.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 which has a substantive and justifiable impact;

.5 (Intentionally Deleted);

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner after the acceptance of the Final Guaranteed Maximum Price and execution of the Contractor's Agreement;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing

.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto unless the Architect is wholly or partly the cause of the dispute;

.9 (Intentionally Deleted);

.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.

§4.3.2 The Architect's team shall jointly develop, complete, and coordinate Design Documents to include Construction Documents for the Project. With the proper preparation of Construction Documents with minimal errors, inconsistencies and discrepancies, the need for the services listed below shall be minimized. However, if through no fault of the Architect's team the following Additional Services are required of the Architect's team, the Architect shall notify the Owner prior to commencing work considered additional services, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required or are the result of the quality of the Architect's Construction Documents, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for the following services:

.1 Excessive reviews of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

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

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, other than those required to clarify or complete the original intent of the Construction Documents;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker, unless the Claims are the result of errors, omissions or inconsistent Construction Documents;

.5 Evaluating extensive substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom, after the acceptance of the Final Guaranteed Maximum Price; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services sixty (60) days after the date of Substantial Completion of the Work.

§4.3.3 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. The Architect shall review submittals up to two (2) times for standard submittals based on clearly demonstrated design intent. For complex design items, including but not limited to: key building materials and systems, finish materials, MEP systems, etc. the numbers of reviews shall be up to and including three (3). For elements that have not been clearly conveyed in the Construction Documents the number of reviews will be as required to demonstrate the design intent to the Contractor and their subcontractors.

.2 Bi-Monthly visits to the site, or as required by Owner up to fifty (50) total visits, by the Architect over the duration of the Project during design and construction phases both (not including site visits required per Section 4.3.4 below). Special visits, as outlined in Section 4.3.4, required to resolve design issues or design problems are in addition to these visits and shall be at no additional cost to the Owner. Trips, beyond the fifty (50) required above, resulting from Contractor error or Owner add-ons may be considered as Additional Services if Owner approves as such prior to Architect taking the trip.

.3 Three (3) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 Three(3) inspections for any portion of the Work to determine final completion

.5 If upon inspection, the Architect determines that the Project is substantially complete, the Architect shall within forty-eight (48) hours after such determination, issue a certification of Substantial Completion subject to outstanding punch list items in a form reasonably acceptable to Owner but at a minimum sufficient to enable the Owner to evidence the achievement of Substantial Completion of the Project.

§4.3.4 Additional site visits as required to provide guidance and direction to the Contractor for design elements which are inconsistent, vague, incomplete or incorrect shall be considered Basic Services and otherwise not reimbursable.

§4.3.5 If the services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, due to 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 need analysis and/or preliminary program related information 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. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§5.2 The Owner shall be responsible for creating the overall Project schedule in the form of major milestones for Preconstruction and Demolition/Construction Phases of the Project. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§5.3 The Owner shall establish and periodically update 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 these costs. The Owner shall furnish the services of a Cost Consultant (Contractor) that shall be responsible for preparing all estimates of the Cost of the Work other than the Final Program and Conceptual Design Phase estimates, which (Final Programming and Conceptual Design) shall be the responsibility of the Architect. 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 budget for the Cost of the Work or in the Project's scope and/or quality.

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

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

§5.5 The Owner shall furnish surveys to describe physical characteristics and utility locations for the site of the Project. The Surveys 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, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

§5.7 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 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 maintain professional liability insurance and other liability insurance as appropriate to the services provided.

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

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

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

§5.1 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§5.12 Before executing the Contract for Construction, the Owner shall endeavor to 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.

§5.13 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.
§5.14 The Owner and Contractor may communicate directly with each other related to the Project. The Owner shall be copied and kept current on all such communications. If these communications are substantive or impact other members of the Project Team, then all parties will be notified of the content of the communications.

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 abate, demolish, renovate and 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 does not include the compensation of the Architect, compensation of the Owner's other consultants, the costs of the land, rights-of-way, financing, and Owner and Design 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 may be adjusted throughout the Project as required under Section 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§6.3 The Owner shall require the Cost Consultant of the Contractor to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall review the cost budgets/estimates at each milestone budget/estimate and provide comments. If the Architect is not in agreement with the Cost Consultant of the Contractor, it is the Architect's responsibility to immediately bring any discrepancies or concerns to the attention of the Owner and Cost Consultant of the Contractor in writing.

§6.4 If, prior to the conclusion of each design phase budget comparison update/estimate, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's design schematics, size, quality or budget, and the Owner shall cooperate with the Architect and Cost Consultant in evaluating recommendations.

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

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
.3 implement any other mutually acceptable alternative.

§6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall make one round of modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Document Phase Services, or the budget as adjusted under Section 6.5.1. This modification of the Construction Documents shall be the limit of Architect's responsibility under Article 6, except that additional revisions may be made as an Additional Service.

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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§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. Upon receipt of partial or full payment to the Architect as required by this Agreement, the Owner shall have title and right to all copyright and intellectual property materials and any and all other property rights, in and to all phased and final designs, plans, and specifications, building information modeling ("BIM"), and all data used in the development of the same, including the results of any tests, surveys or inspections at the Project site, and all photographs, drawings, draft specifications, contract documents, studies, reports, notes and any other materials or work products, whether in electronic or hard copy format, created by the Architect pursuant to this Agreement, in preliminary and final forms and on any media whatsoever (collectively "Documents"), whether the Project for which the Documents were created is executed or not. Architect further warrants that it will ensure that all agreements with Consultants shall contain language incorporating the same provisions for intellectual property materials and all other property rights. Architect and its Consultants shall be entitled to retain copies of all Instruments of Services and other information generated or obtained in the course of providing Services hereunder, for their business records.

§7.3 Any unilateral use by the Owner without the Architect's involvement of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the Owner's sole risk and without liability to the Architect/Engineer and the Architect/Engineer's consultants; provided, however, that if the Owner's unilateral use occurs for completing, using or maintaining the Project as a result of the Architect's breach of this Agreement, nothing in this Article shall be deemed to relieve the Architect of liability for its own acts or omissions or breach of this Agreement

§7.3.1 Intentionally Deleted

§7.4 Intentionally Deleted

§7.5 Architect shall provide to Owner all drawings, specifications, submittals, transmittals, deliverables, instructions to Contractor (including the necessary number of paper and electronic copies) and other documents hereinafter referred to as "Construction Documents," that are within Architect's scope of services and that are sufficient for owner to complete construction of the Project and are free from material defects or omissions.

§7.6 Architect shall provide to Owner, as a "Work Made for Hire," all Drawings, specifications and instructions to Contractor of Architect and Architect's consultants (including the necessary number of paper copies and electronic format copies), hereinafter "Construction Documents," that are within Architect's scope of services and are sufficient for Owner to complete construction of the Project and are free from material defects or omissions. The Construction Documents for this Project are the property of the Owner whether or not the Project is completed and whether or not Architect's Agreement is terminated. The Owner shall be furnished and permitted to retain reproducible copies and electronic versions of the Construction Documents. Only the signature details, standard details and form specifications of the Construction Documents relating to this Project may be used by the Architect on other projects, but the Construction Documents shall not be used as a whole without written authorization by the Owner. Owner-furnished forms, conditions, and other written documents shall not be used on other projects by the Architect without written authorization by the Owner. Owner hereby owns all common law, statutory, or other reserved rights, including copyrights and intellectual property rights, pertaining to the Construction Documents; provided, however, Owner hereby assigns to Architect the right to enforce Owner's copyright in the Construction Documents and agrees to reasonably cooperate with Architect in any proceedings related to such enforcement.
§ 7.7 The provisions of this Article 7 shall survive the termination or expiration of this Agreement.

ARTICLE 8: CLAIMS AND DISPUTES

§8.1 GENERAL

§8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements specified by applicable law. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Article 8.

§8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in A1A Document A2012007, General Conditions of the Contract for Construction, as modified by the Owner. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the willful acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement.

§8.2 MEDIATION

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

§8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, utilizing a mediator mutually agreed upon by both Parties. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation.

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

§8.2.4 If the parties do not resolve the dispute through mediation pursuant to this Section 8.2, the dispute may then proceed to litigation. Jurisdiction and venue for all litigation arising out of or related to this matter shall lie solely with the Gunnison County District Court in Gunnison, Colorado, unless the subject matter is one of exclusive jurisdiction in the United States Federal Court.

§8.3 ARBITRATION
§8.3.1 Intentionally Deleted.

§8.3.1.1 Intentionally Deleted.

§8.3.2 Intentionally Deleted.
§8.3.3 Intentionally Deleted.

§8.3.4 CONSOLIDATION OR JOINDER
§8.3.4.1 Intentionally Deleted.

§8.3.4.2 Intentionally Deleted.

§8.3.4.3 Intentionally Deleted.

ARTICLE 9: TERMINATION OR SUSPENSION

§9.1 If the Owner wrongfully fails to make timely payments for undisputed sums 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 fourteen (14) 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 Architect shall be paid all sums due prior to suspension and actual Reimbursable Expenses. 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's time schedules shall be equitably adjusted.

§9.3 If the Owner suspends the Project unless planned within the Owner's Approved Schedule, for more than 90 days, for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than fourteen (14) days' written notice.

§9.4 Either party may terminate this Agreement upon not less than fourteen (14) 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 fourteen (14) days' written notice to the Architect for the Owner's convenience and without cause.

§9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. Upon any termination or suspension pursuant to Article 9, Architect shall take reasonable steps to minimize costs and fees while services are suspended or after they are terminated.

§9.8 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.

ARTICLE 10: MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.
§10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction as modified by the Owner.

§ 10.3The 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.

§ 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 be given reasonable access to the completed Project to make photographic or artistic representations of the Project for the promotion or its professional services. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ **10.8** To the extent permitted by the Colorado Open Records Act and any other applicable law, if the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

§ **10.9** The section and paragraph headings herein are inserted only for the purpose of convenience and reference and in no way do they define, limit, extend, or describe the meaning, scope, or intent of any part of this Agreement.

§10.11 If any provision of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement which can be given effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated.

§10.12 All notices required under this Agreement shall be in writing and shall be deemed given when hand delivered, sent by confirmed facsimile, or delivered by express courier with written confirmation to the address of the Owner or Architect, as the case may be, as set forth on the first page of the Agreement. Either party by notice given in accordance with this paragraph may change the address to which future notices shall be sent.

§10.13 Notwithstanding the termination of this Agreement, any duty or obligation which has been incurred and which has not been fully observed, performed, or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, or observed, performed, or satisfied (including but not limited to the duties, obligations, and rights with respect to confidentiality) shall survive such expiration or termination until such duty or obligation has been fully observed, or discharged and such right has been enforced, enjoyed, or satisfied.

ARTICLE 11: COMPENSATION

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

Compensation shall be based up a stipulated sum not to exceed $516,236.

See Attachment A for details.

§ 11.2 For Additional Services designated in Section 4.2, the Owner shall compensate the Architect as follows:

See Attachment B for Billable Rates.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

See Attachment B for Billable Rates.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus 10% mark-up:

Based on Billable Rates in Attachment B.

§ 11.5 Compensation for Basic Services is based on a stipulated sum, the compensation for each phase of services shall be as follows: See Attachment A- Fee Proposal 30% design (100% schematic design) *(Table deleted)*

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

§ 11.6 Intentionally deleted

§ 11.7 Intentionally deleted

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

.1 Transportation and authorized out-of-town travel and subsistence;

.2 Long distance phone services, dedicated data and communication services and teleconferences;

.3 Fees paid for securing approval of authorities having jurisdiction over the Project;

.4 Printing, reproductions, plots, standard form documents;

.5 Postage, handling and delivery;

.6 Expense of overtime work for hourly employees only, if authorized in advance by the Owner;

.7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;

.8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's Consultants only specifically identified in the Architect's proposal;

.9 All taxes levied on professional services and on reimbursable expenses;

.10 Intentionally Deleted

.11 Intentionally Deleted

.12 The total reimbursable expenses for complete design services for this Project shall be limited to a maximum amount of thirty five thousand dollars ($ 35,000.00) Please see Attachment A for details. This includes limited design document printing for use by the Owner, Owner's Representative and three (3) copy sets for the Contractor, for each phase or major revision. This amount does not include the cost for printing of drawings and specifications for the subcontractors' use or material to be used by the Owner in marketing the Project.

.13 The maximum reimbursable expense amount of shall be subject to renegotiation if the Project is substantially altered.

§11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without additional mark-ups or burdens.

§11.8.3 Items included as Basic Services within Section 4 and therefore a part of the fee and otherwise not reimbursable include, but are not limited to, the following:

1 Project related web management; and

2 All taxes levied on professional services and reimbursable expenses that the Owner is exempt from.

§11.9 Compensation for Use of Architect's Instruments of Service (Intentionally Deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of one dollar ($ 1.00) 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.

§ 11.10.2 Unless otherwise agreed, all undisputed payments for services shall be made monthly in proportion to services performed. Payments are due and payable thirty (30) days from the date the Architect's Invoice is received by Owner. If the Owner wishes to dispute any payments to the Architect, Owner shall advise the Architect within fourteen (14) calendar days of Owner's receipt of the invoice, and shall identify the specific item(s) and dollar amounts under dispute. Payment of the balance of the invoice shall be due as described above. Amounts unpaid sixty (60) 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. To the extent Owner disputes any payment allegedly due, Owner shall notify Architect that a dispute exists, shall list the specific reason for nonpayment, and shall give Architect an opportunity to cure the noncompliance or offer compensation for a noncompliance that cannot be cured.

6%per annum.

§11.10.3 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.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be provide monthly to the Owner on the Architect's Invoice.

§11.10.5 PAYMENT OF CONSULTANTS

The Architect agrees to promptly pay any and all sums due and owing to the Consultants for their work in connection with the Project, when payment is made by the Owner, subject to the terms and conditions of the Architects' agreements with its Consultants. The Architect shall indemnify, and hold the Owner and Owner's Project Consultant harmless from any and all claims, including but not limited to mechanic's liens, filed or asserted by or on behalf of any of the Architect's Consultants, with respect to nonpayment of fees. At the Owner's request, the Architect will provide documentation of payments by the Architect to Consultants.

§11.10.6 REGARDING AGREEMENTS WITH CONSULTANTS

The Architect shall execute a written agreement with each of its Consultants. Each Consultant shall agree to maintain a professional liability (negligent errors and omissions) policy of insurance and workman's compensation insurance as required by statute. The Consultants shall perform the services as indicated, and no other or additional consultants shall be used to perform any of said services unless the Owner specifically authorizes the use of such other or additional consultants. Copies of Architect's agreements with the Consultants and proof of each Consultant's insurance shall be provided to Owner prior to the Consultant beginning services on the Project. Architect shall indemnify and hold Owner harmless from all liens and other encumbrances against the Owner's property or facilities on account of debts or claims alleged to be due from Architect or its subcontractors. Architect shall manage and obtain required lien waivers and related documentation, and shall defend, at its own expense, any claim or litigation in connection therewith.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§12.1.1 Confidentiality: The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner. Owner herein designates the following as confidential information: Security measures; security access codes; pending real estate purchases, exchange, lease or value; any information pertaining to litigation; student likenesses and student record information; employee information; and any other information deemed or required to be maintained as confidential by law.

§12.1.2 Conflicts in Documents: To the extent of conflicts between the Contract Documents, amendments shall prevail over original forms.

§12.1.3 Independent Contractor: **IT IS UNDERSTOOD AND AGREED THAT THE RELATIONSHIP OF ARCHITECT TO OWNER SHALL BE THAT OF AN INDEPENDENT CONTRACTOR.** Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to: 1) make Architect the agent, servant or employee of the Owner; or 2) create any partnership, joint venture, or other association between Owner and Architect. Any direction or instruction by Owner or any of its authorized representatives in respect to the Architect's services shall relate to the results of the Owner desires to obtain from the Architect, and shall in no way affect the Architect's independent contractor status.

§12.1.4 No Waiver: No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

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 Owner and Architect.

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

.1 AlA Document B103™-2007, Standard Form Agreement Between Owner and Architect as modified by the Owner.

.2 List Exhibits:

Attachment A: Fee Proposal, Architect's Consultant List, Reimbursable Expenses, Architect's Project Schedule

Attachment B: Billable Rates Schedule

.3 Other documents:

None.

END