

23718 W US HWY 27  
High Springs, Florida 32643



Telephone: (386) 454-1416  
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Web: [www.highsprings.us](http://www.highsprings.us)

**CITY COMMISSION MEETING  
AMENDED AGENDA  
City Hall  
23718 WEST US HWY 27**

**AUGUST 25, 2016**

**6:30 PM**

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<b>CALL TO ORDER:</b>	VICE MAYOR GLORIA JAMES
<b>INVOCATION:</b>	SENIOR PASTOR DEREK LAMBERT FIRST BAPTIST CHURCH OF HIGH SPRINGS AND HSPD CHAPLAIN
<b>PLEDGE OF ALLEGIANCE:</b>	VICE MAYOR GLORIA JAMES
<b>ROLL CALL:</b>	JENNY L. PARHAM, CITY CLERK
<b>APPROVAL OF AGENDA</b>	
<b>APPROVAL OF MINUTES:</b>	JULY 14, 2016 COMMISSION WORKSHOP AUGUST 9, 2016 BUDGET WORKSHOP

PRESENTATION OF FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) GRANT CHECK FOR PHASE 1 OF WALTER HOWARD PARK GRANT PROJECT BY PARK MANAGER GEORGE PAXTON.

**CITIZEN REQUESTS AND COMMENTS – FOR ISSUES NOT ON AGENDA (PLEASE STATE NAME FOR THE RECORD – LIMIT COMMENTS TO 5 MINUTES)**

**NEW BUSINESS**

- 1. DISCUSS AND CONSIDER COMPENSATION TO JOHN AND GERTIE KELLY FOR HOME DAMAGE.**
- 2. CONSIDER RESOLUTION 2016-U, A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HIGH SPRINGS ADOPTING UPDATED MUNICIPAL FEES FOR THE BUILDING DEPARTMENT SERVICES; AND PROVIDING AN EFFECTIVE DATE.**
- 3. REVIEW AND CONSIDER AGREEMENT WITH CAROL ROWAN FOR THE MANAGEMENT OF THE HIGH SPRINGS FARMER'S MARKET.**
- 4. CONSIDER APPROVAL OF ENGINEERING SERVICES AGREEMENT WITH MITTAUER & ASSOCIATES, INC. FOR THE CAMP KULAQUA/SRWMD PROJECT.**

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- 5. AUTHORIZATION TO PROVIDE LEGAL SERVICES PERTAINING TO ETHICS COMPLAINT.**
- 6. REVIEW FINANCIAL REPORTS FOR JUNE, 2016.**
- 7. CONSIDER APPROVAL OF ENGINEERING SERVICES AGREEMENT WITH MITTAUER & ASSOCIATES, INC. FOR SEPTIC TANK ABATEMENT GRANT PROJECT.**
- 8. CONSIDER APPROVAL OF AGREEMENT FOR ARCHITECTURAL SERVICES WITH BRAME HECK ARCHITECTS, INC. FOR THE FARMER'S MARKET PAVILION.**

**CITY ATTORNEY REPORT/UPDATE**

**CITY MANAGER REPORT/UPDATE**

**COMMENTS AND CONCERNS:**

- 1. COMMISSIONERS**
- 2. MAYOR**

**MOTION TO ADJOURN**

**PLEASE NOTE:** PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED DURING THIS MEETING, HE OR SHE WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT, A PERSON WITH DISABILITIES NEEDING ANY SPECIAL ACCOMMODATIONS TO PARTICIPATE IN CITY COMMISSION MEETINGS, SHOULD CONTACT THE OFFICE OF THE CITY CLERK, 237187 WEST US HWY 27, HIGH SPRINGS, FLORIDA 32643, TELEPHONE (386) 454-1416.



**MITTAUER**  
**& ASSOCIATES, INC.**  
CONSULTING ENGINEERS &  
PROJECT FUNDING SPECIALISTS

580-1 WELLS ROAD  
ORANGE PARK, FL 32073  
PHONE: (904) 278-0030  
FAX: (904) 278-0840  
WWW.MITTAUER.COM

August 19, 2016

Mayor and City Commission  
City of High Springs  
110 NW 1<sup>st</sup> Avenue  
High Springs, FL 32643-1000

RE: Engineering Services Agreement  
SRWMD RIVER Grant Septic Tank Abatement  
City of High Springs, Florida  
Mittauer & Associates, Inc. Project No. 1105-18-1

Dear Mayor and City Commission:

In accordance with our Continuing Contract for Professional Engineering Services, we are pleased to present the following proposal for Engineering Services in conjunction with the design, permitting, and construction administration for the abatement of approximately 13 septic tanks within the City of High Springs existing low pressure collection system. Mittauer & Associates, Inc., hereinafter referred to as the Engineer, proposes to provide services as described in the Scope of Services to the City of High Springs, the Client, for the fees stipulated hereafter.

#### **ITEM A - ENGINEERING DESIGN**

1. The Engineer shall prepare plans and specifications for the abatement of approximately 13 septic tanks in various areas of the existing low pressure collection system. Priority will be given to those residence which have already granted an easement, are owner occupied, and have a low pressure main adjacent to their property. Design shall meet FDEP requirements.

#### **ITEM B - PERMIT APPLICATIONS**

1. The Engineer shall prepare a Florida Department of Environmental Protection Wastewater Collection System application and shall respond to all requests for additional information concerning the proposed grinder pump stations and septic tank abandonments.

### **ITEM C - TOPOGRAPHIC SURVEY**

The Engineer shall obtain on-site, above-ground field topographic survey information at the immediate area of improvements as necessary for the preparation of construction drawings and preparation of the permit applications. As it relates to subsurface utilities, the Engineer shall perform a Quality Level C Investigation, in accordance with ASCE 38-02, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

### **ITEM D - CONSTRUCTION BIDDING SERVICES**

The Engineer shall assist the Client in advertising the project for construction bids, based upon award to a single contractor, by preparing an invitation to bid, selling bid documents to prospective bidders, maintaining a record of prospective bidders to whom Bidding Documents have been issued, issuing addenda as appropriate to clarify, correct or change the bid documents and preparing a tabulation of bids.

### **ITEM E - CONSTRUCTION ADMINISTRATION**

The Engineer shall provide standard Engineering Construction Administration Services including the preparation of construction contract documents; attending a preconstruction conference; reviewing the Contractor's material shop drawings; making periodic visits to the site to observe the progress of the various aspects of the Contractor's work; reviewing and approval of the Contractor's application for payment; processing change orders, if required; reviewing the Contractor's completion documents and record drawings; and performing a final inspection of the work.

### **ITEM F - RESIDENT OBSERVATION**

If requested by the Client, the Engineer may provide the services of a part-time Resident Project Representative at the site to provide part-time observation of the Contractor's work during critical/important times during construction. Resident observation shall be an additional service and shall be billed hourly at the Engineer's standard billing rate for part-time resident observer.

### **ITEMS FURNISHED BY CLIENT AT NO EXPENSE TO THE ENGINEER**

The Client shall provide copies of all easements of the residences to be served to the Engineer. The Client or Owner shall provide all regulatory agency permit application fees, and related items. The Engineer's scope of services does not include the preparation of landscape plans, traffic studies, retaining wall design, zoning related tasks, wetlands surveys, wetlands permitting and/or wetland mitigation, flood plain permitting and/or flood plain mitigation, tree surveys, boundary or easement surveys, subdivision platting or value engineering. Owner shall pay for all project advertising costs.

**SCHEDULE OF FEES**

For Item A - Engineering Design, the Engineer shall be paid a lump sum fee of \$13,000.

For Item B - Permit Applications, the Engineer shall be paid a lump sum fee of \$3,200.

For Item C - Topographic Survey, the Engineer shall be paid a lump sum fee of \$3,400.

For Item D - Construction Bidding Services, the Engineer shall be paid a lump sum fee of \$1,700 for each time, each phase of the project is bid.

For Item E - Construction Administration, the Engineer shall be paid a lump sum fee of \$3,700 assuming that the project is awarded to a single contractor.

For Item F - Resident Observation, (if requested by Client) shall be billed at an hourly rate of \$76/hr.

**TOTAL ENGINEERING FEE = \$25,000.00** (excluding resident observation)

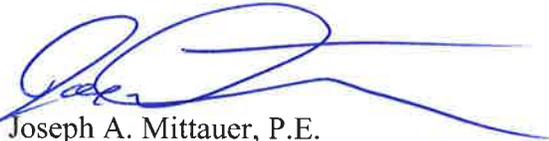
The Engineer shall respond to design-related questions during construction at no cost to the Client. The Engineer shall make himself available to the Client at the Engineer's standard hourly rates for additional services as requested and changes in project scope of work.

Invoices for services in progress are prepared monthly and are due in accordance with Florida Statute 218, The Local Government Prompt Payment Act. Payments which are not received in accordance herewith are subject to late fees as outlined in the Act as well as collection fees and may cause the Engineer to stop work on the Client's projects. The fees listed above do not include state sales tax or value added tax, should they be required by law.

**ACCEPTANCE**

Acceptance of this proposal may be indicated by the signature of a duly authorized official of the Client in the space provided below. One signed copy of the proposal returned to the Engineer shall serve as Notice to Proceed. Should this proposal not be accepted within a period of thirty (30) days, it shall become null and void.

Sincerely,  
Mittauer & Associates, Inc.

  
Joseph A. Mittauer, P.E.  
President

Accepted by  
City of High Springs, Florida

By: \_\_\_\_\_  
Bryan Williams, Mayor

JAM/TPN/pj

Date: \_\_\_\_\_



## Commission Agenda Item Request Form

***MUST BE SUBMITTED TO THE CITY CLERK'S OFFICE BY NOON ON THE  
WEDNESDAY PRIOR TO THE COMMISSION MEETING***

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**MEETING DATE: August 25, 2016**

**SUBJECT: Farmers Market**

**AGENDA SECTION: NEW**

**DEPARTMENT: CITY MANAGER**

**PREPARED BY: FINANCE DIRECTOR**

**RECOMMENDED ACTION: APPROVE**

**COST:**

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### Summary

**Revised Construction Cost** \_\_\_\_\_

**ATTACHMENTS: Contract with Brame Heck architects Inc.**

**REVIEWED BY CITY MANAGER: \_\_\_\_\_**

# DRAFT AIA® Document B101™ - 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the « » day of « » in the year «two thousand and sixteen »  
(In words, indicate day, month and year.)

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

City of High Springs 110 NW 1<sup>st</sup> Avenue  
High Springs, FL 32643

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

Brame Heck Architects Inc.  
606 N.E. First Street  
Gainesville, FL 32601

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

«Farmer's Market Pavilion City of High Springs»  
«High Springs, FL»

This project will include the design of an open air pavilion for use as a Farmer's Market in downtown High Springs. It will provide 3,131 square feet of space. There will be minor site improvements to accommodate accessible parking. Brame Heck Architects will assist the Owner in the submission and incorporation of USDA requirements in connection with this project. Submittal for any site plan approval and water management district requirements are not included in this agreement. »

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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### EXHIBIT A INITIAL INFORMATION

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

« »

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:

« Unknown »

- .2 Substantial Completion date:

« Unknown »

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, 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.

#### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

**§ 2.5** The Architect shall maintain the 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:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- .1 General Liability  
« \$1,000,000.00 »
- .2 Automobile Liability  
« \$1,000,000.00 »
- .3 Workers' Compensation  
« \$1,000,000.00 »
- .4 Professional Liability  
« \$1,000,000.00 »

### **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 structural, civil, mechanical, and electrical engineering services. Services not set forth in this Article 3 are 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 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 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 made without the Architect's approval.

**§ 3.1.5** 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.

**§ 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, except that the Owner will have the sole responsibility for any site plan approval and water management district requirements.

### **§ 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, and the proposed procurement or 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, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project's 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 and concurrence by the Agency of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval and concurrence by the Agency. 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 modeling. 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 environmentally responsible 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 other environmentally responsible 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 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 provide the Owner with the appropriate documentation showing the Schematic Design and the estimated Project cost to the Owner to seek the concurrence of the Agency. When the Owner has accepted and the Agency has concurred on the Schematic Design studies and estimated Project cost, the project Architect may be authorized to proceed with the Design Development Documents.

**§ 3.2.7** The Architect shall attend conferences with the Owner, representatives of the Agency and other interested parties as may be reasonably necessary.

### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

**§ 3.4.1** Based on the Owner's approval and concurrence by the Agency 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 Construction Documents for the Owner's approval and concurrence by the Agency. 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 of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in

order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

**§ 3.4.3** During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and 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.

**§ 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.

**§ 3.4.6** The Architect shall certify in writing, to the best of the Architect's knowledge, information and belief, that the Drawings and Specifications are in conformance with the applicable development standard, as defined in Agency regulations furnished by the Owner under subparagraph 5.1.

**§ 3.4.7** Prior to advertisement for bids, the Architect shall provide two sets of Construction Documents for use by the Owner, the Agency and the appropriate Federal, State and local agencies from whom approval of the Project must be obtained. The reproduction cost of such Construction Documents shall be included in the compensation paid to the Architect, notwithstanding subparagraph 11.8. The Owner shall obtain Agency concurrence with the Construction Documents, estimated Project costs, and authorization to proceed in writing prior to advertisement for bids.

## **§ 3.5 BIDDING OR NEGOTIATION 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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
  - .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
  - .3 organizing and conducting a pre-bid conference for prospective bidders;
  - .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
  - .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.
- .6 The Architect shall furnish additional copies of the Construction Documents as requested by the prospective bidders, and other interested parties, and may charge them a reasonable cost for such copies.

**§ 3.5.2.3** The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall 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 procuring the reproduction 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; and
- .3 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** The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall 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™-2007, General Conditions of the Contract for Construction and the conditions of RD Instruction 1924-A, Guide 1, attachment 10. If the Owner and Contractor modify AIA Document A201-2007, 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 be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is paid, and at the Owner's direction during the period of correction of the Work described in the Contract for Construction. The Architect shall furnish architectural services and consultations necessary to correct minor construction defects encountered during such correction period. The Architect shall assist the Owner in performing a review of the Project during the 11th month after the date of substantial completion. Such services shall be furnished without additional charge except for travel and subsistence costs. 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 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the expiration of the period of correction of the Work described in the Contract for Construction.

**§ 3.6.1.4** Upon award of the construction contract, the Architect shall furnish to the Owner five sets of Construction Contract Documents for execution. The costs of these sets shall be included in the compensation to the Architect notwithstanding subparagraph 11.8.

**§ 3.6.1.5** The Architect shall participate in the Preconstruction Conference and shall advise and consult with the Owner and the Agency.

### **§ 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 4.3.3, 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. Such visits to the site shall be documented in writing on inspection report forms acceptable to the Owner and the Agency. Copies shall be furnished to the Owner, Contractor, and the Agency. 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 such 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, material and equipment 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 A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

**§ 3.6.2.6** The Architect shall advise the Owner and the Agency of required tests, inspections and test results; shall furnish coordination of such tests and inspections; and shall advise the Owner and the Agency of the results of same. Copies of tests results shall be furnished upon request to the Owner, and the Agency.

### **§ 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to 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 material 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.

**§ 3.6.3.4** The Architect shall obtain Agency concurrence on all Certificates of Payment before payment is made.

### **§ 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. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

**§ 3.6.4.2** In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples,

but only for the limited purpose of checking for conformance with information given and the design concept expressed in the 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to the provisions of Section 4.3, 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 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 authorize 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 the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Preparation of Change Orders which do not substantially affect the Project shall be included in the compensation computed in paragraph 11.1. The Owner, with the assistance of the Architect, shall obtain Agency concurrence in writing for all change orders prior to the performance of the Work.

**§ 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 conduct an inspection prior to the issuance of the Certificate of Substantial Completion and shall submit a written report of work to be completed to the Owner, the Agency and the Contractor prior to final acceptance. The Architect shall notify the Agency about inspection allowing reasonable time for the Agency's representative to attend. Such services shall be coordinated with the Agency. Prior to submitting the final Certificate for Payment, the Architect shall; 1) conduct an inspection to determine compliance with the requirements of the Contract Documents, and 2) receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor.

**§ 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 the Work is found to be substantially complete, 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 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

*(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Owner	
§ 4.1.2 Multiple preliminary designs	Not Provided	
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys	Owner	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™-2008)	Not Provided	
§ 4.1.7 Civil engineering	Architect	3.1
§ 4.1.8 Landscape design	Not Provided	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Architect	4.2.1
§ 4.1.12 On-site Project Representation (B207™-2008)	Not Provided	
§ 4.1.13 Conformed construction documents	Not Provided	
§ 4.1.14 As-Designed Record drawings	Not Provided	
§ 4.1.15 As-Constructed Record drawings	Architect	4.2.3
§ 4.1.16 Post occupancy evaluation	Not Provided	
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Not Provided	
§ 4.1.20 Telecommunications/data design	Not Provided	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	Not Provided	
§ 4.1.22 Commissioning (B211™-2007)	Not Provided	
§ 4.1.23 Extensive environmentally responsible design	Not Provided	
§ 4.1.24 LEED® Certification (B214™-2012)	Not Provided	
§ 4.1.25 Fast-track design services	Not Provided	
§ 4.1.26 Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.2.1 The Architect shall provide a cost estimate based on Construction Contract Documents. The estimate shall show a breakdown of the project cost in accordance with Rural Development requirements and procedures.

§ 4.2.2 The selection and compensation of the Project Representative, if required, shall be concurred in by the Agency.

§ 4.2.3 Two sets of Record Drawings shall be provided to the Owner. The costs of these sets shall be included in the compensation to the Architect not withstanding Subparagraph 11.8.

« »

§ 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, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 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 the following 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, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing 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.

§ 4.3.2 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 the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

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

§ 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 submittal of the Contractor
- .2 «Six» ( «6» ) visits to the site by the Architect over the duration of the Project during construction
- .3 «One» ( «1» ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «One» ( «1» ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within «twelve» ( «12 » ) 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. 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 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 all of these costs. 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 necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

§ 5.6 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 as appropriate to the services provided.

§ 5.7 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.

§ 5.8 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.

§ 5.9 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.

**§ 5.10** Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and 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.

**§ 5.11** 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.

**§ 5.12** 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.

**§ 5.13** Owner shall provide Agency design and construction document regulations and guides to the Architect, upon request. The Owner shall provide information on requirements and procedures of the Agency.

## **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 does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, 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 Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

**§ 6.4** If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, 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, without additional compensation, 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

**§ 6.8** The Architect shall consult with the Agency Architect or Engineer about the Agency's requirements and procedures.

## **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.

**§ 7.3** Upon execution of this Agreement, 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, including prompt payment of all sums when due, under this Agreement. 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 material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service 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 author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

## **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 of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such

rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

## **§ 8.2 MEDIATION**

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

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

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

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

## **§ 8.3 ARBITRATION**

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

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

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

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

#### **§ 8.3.4 CONSOLIDATION OR JOINDER**

**§ 8.3.4.1** Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

#### **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 Architect shall be paid 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's compensation may be equitably adjusted, as mutually agreed, to provide 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** 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 and all Termination Expenses as defined in Section 9.7.

**§ 9.7** Termination Expenses as mutually agreed 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.

§ 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 and Section 11.9.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, 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.

§ 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.

§ 10.8 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 This Agreement and any amendments to this Agreement shall not be in full force and effect until concurred with in writing by the Agency State Director or the State Director's delegate. Such concurrence shall be evidenced by the signature of such a representative of the Agency in the space provided at the end of this Agreement.

§ 10.10 If applicable, the Architect shall comply with section 319 of Public Law 101-121, as supplemented by the Department of Agriculture regulations (7 C.F.R. part 3018). This statute pertains to restrictions on lobbying and applies to the recipients of contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, the Architect must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Contract. The certification and disclosure forms shall be provided by the Owner.

§ 10.11 The Architect agrees to abide by the requirements under Executive Order 12549, which pertains to the debarment or suspension of a person from participating in a Federal program or activity. If the total compensation described in Article 1.5 exceeds \$25,000, the Architect shall complete the relevant certification form provided by the Owner.

**ARTICLE 11 COMPENSATION**

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

«A Fixed Fee of Thirty two thousand seven hundred eighty one dollars and no cents \$32,781. »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

«For 4.1.11 Detailed Cost Estimating services, a fixed fee of \$1,980  
For 4.1.15 As-Constructed Record drawings, for the coordination and creations of those documents, a fixed fee of \$585. The actual hard copy sets will be provided under the Basic Services fee. »

§ 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:

*(Insert amount of, or basis for, compensation.)*

«Hourly basis as indicated in section 11.7. »

§ 11.4 Compensation for 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 «fifteen » percent ( «15 » %), or as otherwise stated below:

« »

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

Schematic Design Phase	«thirty »	percent (	«30 »	%)
Construction Documents Phase	«forty-five »	percent (	« 45 »	%)
Bidding or Negotiation Phase	«five »	percent (	« 5 »	%)
Construction Phase	«twenty »	percent (	« 20 »	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

Employee or Category	Rate
Architect	\$165
CAD Drafter	\$105
Clerical	\$55
Engineer	\$165 to \$185

**§ 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 services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .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 requiring higher than regular rates, 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;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «fifteen » percent ( «15 » %) of the expenses incurred.

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of «zero » (\$ «0 » ) 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, 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 «twenty-one » ( «21 » ) days after the invoice date shall bear interest at the prevailing rate at Capital City Bank, Gainesville.

§ 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 available to the Owner or representatives of the United States of America at mutually convenient times.

§ 11.10.5 The Architect shall provide a detailed cost estimate for Reimbursable Expenses as defined in subparagraph 11.8., which shall be attached and made a part of this Agreement. The cost estimate must be approved in writing by the Owner and shall be concurred with in writing by the Agency before the services are rendered. The billings for reimbursable services shall not exceed the budgeted amount without prior approval of the Owner with the concurrence of the Agency. The Agency may not concur in requests for payments which exceed the budgeted amount unless it is established that funds are available for such expenditures.

*Note: None of the services listed in subparagraph 11.8 are anticipated to be provided on this project. Hence, there is no attachment.*

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

§ 12.1 This Agreement has been modified and supplemented by RD Instruction 1924-A, Guide 4, Attachment I.

« »

**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 Owner and Architect.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

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

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in duplicate on the respective dates indicated below.

AIA Document B101™ - 2007 (formerly B151™ - 1997). Copyright © 1974, 1978, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This draft was produced by AIA software at 08:54:06 on 08/16/2016 under Order No.8010873020\_1 which expires on 11/11/2016, and is not for resale.

OWNER: City of High Springs

ATTEST: \_\_\_\_\_ By \_\_\_\_\_

Type Name \_\_\_\_\_ Type Name Edwin Booth

Title \_\_\_\_\_ Title City Manager

Date \_\_\_\_\_ Date \_\_\_\_\_

ARCHITECT: Brame Heck Architects Inc.

ATTEST: \_\_\_\_\_ By \_\_\_\_\_

Type Name \_\_\_\_\_ Type Name Michael P. Richmond

Title \_\_\_\_\_ Title President

Date \_\_\_\_\_ Date \_\_\_\_\_

The United States of America, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.

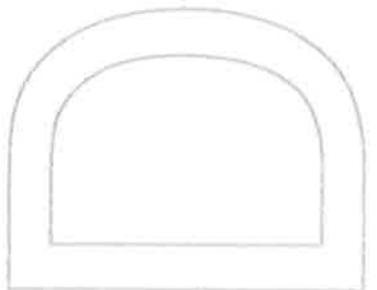
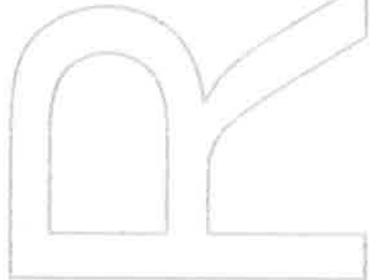
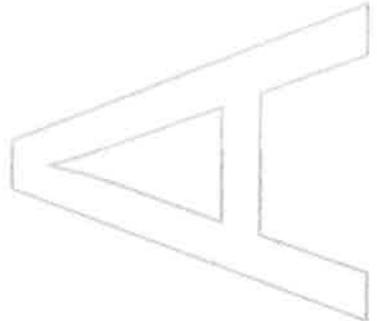
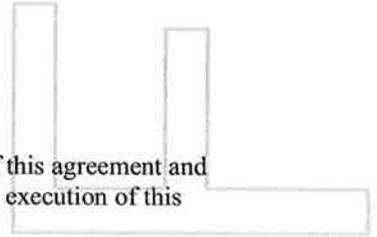
U.S. Department of Agriculture  
Rural Development  
Rural Housing Service

By \_\_\_\_\_

Type Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



Reproduction Costs to be included in Fixed Fee

PHASE	DRAWINGS				SPECIFICATIONS						
	NUMBER OF SHEET PER SET	NUMBER OF SETS	TOTAL SHEETS	COST PER SHEET	COST	NUMBER OF SHEET PER SET	NUMBER OF SETS	TOTAL SHEETS	COST PER SHEET	COST	TOTAL COST
Preliminary	0	0	0	\$0.15	\$0.00	4	2	8	\$1.20	\$9.60	<b>\$9.60</b>
Const. Docs.	325	2	650	\$0.15	\$97.50	11	2	22	\$1.20	\$26.40	<b>\$123.90</b>
Award	325	5	1625	\$0.15	\$243.75	11	5	55	\$1.20	\$66.00	<b>\$309.75</b>
Record	325	2	650	\$0.15	\$97.50	11	2	22	\$1.20	\$26.40	<b>\$123.90</b>
SUBTOTAL										\$557.55	
HANDLING FEE										15%	83.6325
<b>GRAND TOTAL</b>										<b>\$641.18</b>	