

DRAFT AIA® Document B102™ – 2017

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

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

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

«»«»
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« »

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

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for the following (hereinafter referred to as "the Project"):
(Insert information related to types of services, location, facilities, or other descriptive information as appropriate.)

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« »

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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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2.)

«Owner's and Architect's responsibilities are as defined in this Agreement as per AIA B201, Article 3.1.»

§ 1.1.1 The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. The Architect shall satisfy the requirements for the lawful practice of architecture in the state where the Project is located.

§ 1.2 The Architect shall perform its services consistent with the professional skill, care and diligence ordinarily provided by architectural firms practicing in the greater Boston area on projects of comparable scope, size and complexity (the "Standard of Care"). The Architect shall perform its services as expeditiously as is consistent with the Standard of Care and the orderly progress of the Project, and in accordance with the progress schedule ("Schedule"), which Schedule shall be provided to the Owner within 30 days of commencement of services. The Schedule may be adjusted as the Project proceeds, subject to the Owner's reasonable written approval. This Schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the Schedule shall not, except for reasonable cause, be exceeded by the Architect or the Owner.

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

§ 1.3.1 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5 of AIA B201. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 1.4 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.

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

§ 1.5.1 Commercial General Liability with policy limits of not less than « » (\$« ») for each occurrence general aggregate, and products completed operations aggregate, and « » (\$ « ») in the aggregate for bodily injury and property damage.

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

§ 1.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 1.5.1 and 1.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 1.5.4 Workers' Compensation at statutory limits.

§ 1.5.5 Employers' Liability with policy limits not less than « » (\$ « ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit.

§ 1.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than «Two Million Dollars » (\$ «2,000,000.00 ») per claim and «Two Million Dollars » (\$ «2,000,000.00 ») in the aggregate.

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

§ 1.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 1.5 prior to the performance of Services.

§ 1.6 Architect's Insurance

§ 1.6.1 The Architect shall secure and maintain at its sole cost and expense, professional liability insurance to protect against loss resulting from design errors and omissions, failure to coordinate properly the Drawings and Specifications of the Project, and failure to properly execute the construction administration duties for the Project. The Architect shall be required to secure and maintain Professional Liability Insurance with a minimum coverage as set forth above.

The Architect shall maintain its Professional Liability Insurance required under this Agreement in full force and effect at all times during the Architect's performance of the Services under this Agreement, and for a period not less than six (6) years after the date of Substantial Completion of the Work or the completion of the Architect's Services under this Agreement, whichever comes later. For all insurance policies that provide coverage on a claims-made basis: (a) the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work; and (b) if coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Architect must purchase "extended reporting" coverage for a minimum of the six (6) years as required herein. The Commercial General Liability Insurance required under this Agreement shall be in full force and effect at all times during the Architect's performance of Services under this Agreement, and for a period of three (3) years after the date of Substantial Completion of the Work or the completion of the Architect's Services, whichever comes later. All other insurance shall be maintained in full force and effect at all times during the Architect's performance of the Services under this Agreement, and until the date of Substantial Completion of the Work or completion of the Architect's Services, whichever comes later.

§ 1.6.2 The Architect shall furnish to the Owner annually, unless otherwise requested, during the active terms of this Agreement, a certificate from an Insurance Carrier authorized to do business in the location of the Project indicating: 1) the existence of the insurance required under this section; 2) the amount of deductible; and 3) the amount of coverage of such insurance. The Architect shall submit a Certificate of Insurance covering the Professional Liability Insurance requirement for one year beyond the Substantial Completion Date of the Project.

§ 1.6.3 During any period in which the Architect is not in compliance with the terms of this Article, no compensation will be paid by the Owner to the Architect.

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Owner's responsibilities are as defined in this Agreement and as per AIA B201-2017, Article 4. .

§ 2.6

ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 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.

§ 3.2 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.

§ 3.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the purposes of evaluating, constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including payment of all sums due pursuant to Article 5 and Article 6. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service 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 5.4, the license granted in this Section 3.3 shall terminate. If and upon the date the Architect is terminated by the Owner for any cause other than default by the Owner of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. In the case where the parties are engaged in a good faith dispute, the Owner will retain the aforementioned nonexclusive license until or unless the Owner is deemed to be in default.

§ 3.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify 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 3.3.1. The terms of this Section 3.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 5.4.

§ 3.4 Except for the licenses granted in this Article 3, 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.

§ 3.5 Except as otherwise stated in Section 3.3, the provisions of this Article 3 shall survive the termination of this Agreement.

ARTICLE 4 CLAIMS AND DISPUTES

§ 4.1 General

§ 4.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 6 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 4.1.1. Nothing in this provision is intended to extend any applicable statute of limitations or repose.

§ 4.1.2 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 A201–2017, General Conditions of the Contract for Construction, modified and incorporated into this Agreement. 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.

§ 4.1.3 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. This waiver shall not affect or limit the Architect's indemnity obligations set forth in Section 1.7.

§ 4.2 Mediation

§ 4.2.1 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 or the Owner's rights and obligations under this Agreement, the liened party 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.

§ 4.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of an 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.

§ 4.2.3 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.

§ 4.2.3.1 At the request of the Owner, any claims between Owner and Contractor, Owner and Architect, Contractor and Architect, Contractor and its Surety, or Contractor and its Subcontractors or suppliers, shall be submitted for

mediations as provided in this Section 4.2, and any or all of the parties named above shall, at the Owner's request, be joined or consolidated therein.

§ 4.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- Arbitration pursuant to Section 4.3 of this Agreement, which Owner in its sole discretion may waive in favor of Litigation in a court of competent jurisdiction
- Litigation in a court of competent jurisdiction
- Other (Specify)

If the Owner in its sole discretion waives binding arbitration, the dispute will be resolved in a court of competent jurisdiction, which the parties agree shall be the Massachusetts Superior Court for Bristol County, in which case the parties agree to waive any right to a trial by jury on any and all claims arising out of this Agreement.

§ 4.3 Arbitration

§ 4.3.1 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, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement and shall be conducted in a location local to the Project. 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.

§ 4.3.1.1 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 or statute of repose. 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.

§ 4.3.2 Upon request of the Owner, any claims between Owner and Contractor, Owner and Architect, Contractor and Architect, Contractor and its Surety, or Contractor and its Subcontractors or suppliers, shall be submitted for arbitration or litigation as provided in this Section 4.3 and any or all of the parties named above shall, at the Owner's request, be joined or consolidated therein.

§ 4.3.3 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.

§ 4.3.4 Consolidation or Joinder

§ 4.3.4.1 Either party, if mutually agreed, 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).

§ 4.3.4.2 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.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 4.4 The provisions of this Article 4 shall survive the termination of this Agreement.

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 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. The Owner will not be obligated to pay any sum disputed in good faith. However, pending resolution of any dispute or claim, the Architect will continue performance of the Agreement. If the Architect elects to suspend services, the Architect shall give fifteen (15) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred as a direct result of the interruption and resumption of the Architect's services.

§ 5.2 If the Owner suspends the Project for more than 60 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for reasonable expenses incurred in the interruption and resumption of the Architect's services, as mutually agreed upon. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Project is suspended for any reason or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than 30 days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than 30 days' written notice should the other party fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement upon not less than 30 days' written notice to the Architect for the Owner's convenience and without cause.

§ 5.6 If the Owner terminates this Agreement for its convenience pursuant to Section 5.5, or the Architect terminates this Agreement pursuant to Section 5.3, the Owner shall compensate the Architect for services performed prior to termination, together with Reimbursable Expenses then due. Under no circumstances shall Architect be entitled to lost profits or any other costs.

§ 5.7

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§ 5.8 Except as otherwise expressly provided herein, this Agreement shall terminate
(Check the appropriate box.)

One year from the date of commencement of the Architect's services

One year from the date of Substantial Completion

Other

(Insert another termination date or refer to a termination provision in an attached document or scope of service.)

« »

If the Owner and Architect do not select a termination date, this Agreement shall terminate one year from the date of commencement of the Architect's services.

§ 5.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 .

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services as set forth below and in AIA Document B201-2017, as modified, Article 6.

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§ 6.2 Compensation for Reimbursable Expenses

§ 6.2.1 Reimbursable Expenses are in addition to compensation set forth in Section 6.1 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
- .3 Permitting fees required by authorities having jurisdiction over the Project;
- .4 Bulk reproductions and plotting of Design and Contract Documents for the Owner's review and bidding purposes;
- .5 Postage, handling and delivery of Instruments of Service;
- .6
- .7 Renderings, models, mock-ups, requested and authorized in advance as an additional service by the Owner or required for the Project;
- .8
- .9
- .10
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- .12 Other similar direct Project-related expenditures, if authorized by the Owner.

§ 6.2.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «zero» percent («0» %) of the expenses incurred.

§ 6.2.3

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§ 6.3 Payments to the Architect

§ 6.3.1 Initial Payments

§ 6.3.1.1

§ 6.3.2 Progress Payments

§ 6.3.2.1 Unless otherwise agreed, 30 days from the date the Owner receives the Architect's invoice, payments for services shall be made monthly in proportion to services performed. Payments are due and payable 30 days after receipt of the Architect's invoice, except for amounts disputed in writing by the Owner. Amounts unpaid «ninety» («90») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

½ of 1% per month

« » « »

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

§ 6.3.2.3 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

Expenses not reimbursed by the Owner and part of the fee for Basic Services include, but are not limited to, the following:

1. Reproductions and plotting of Documents used by the Architect and the Architect's Subconsultants;
2. Purchase, rental or use of computer hardware or software;
3. Travel by the Architect and Subconsultants between their places of business;
4. Local telephone and equipment charges and any other office expenses customarily considered overhead such as office supplies, rent, utilities, general clerical and secretarial services and depreciation;
5. Models produced by the Architect or the Architect's consultant for use in studying or illustrating the design or other aspects of the project not specifically requested and authorized by the Owner as an additional service.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the Commonwealth of Massachusetts, excluding that jurisdiction's choice of law rules.

§ 7.2 Except as separately defined herein, terms in this Agreement shall have the same meaning as those in AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified and used with the Owner's Agreement with Construction Manager.

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

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

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

§ 7.5 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 7 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 7 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.

§ 7.6 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.

§ 7.7 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.

§ 7.8 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 any other information without the Owner's approval. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 7.9 Unless specifically requested by the Architect and authorized by the Owner in writing, the Architect shall maintain the confidentiality of information of the Project, 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. If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 7.9.1.

§ 7.9.1

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

§ 7.11 The Architect may not use any drawings or specifications thereof for any purpose not related to the Project without the Owner's consent.

§ 7.12 Upon completion of the Work or any earlier termination of the Agreement, the Architect will furnish the Owner with one complete set of reproducible record prints and one electronic copy of the documents, as they exist at that time, which may be used by the Owner without the Architect's permission for any proper purpose relating to the Project as determined by the Owner and per Article 3.

§ 7.13 The Architect shall accrue to the Owner all discounts, rebates and refunds obtained with respect to any reimbursable expense incurred in connection with the Project.

§ 7.14 Whenever provision is made herein or in the Contract Documents for the approval or consent of the Owner, or that any matter be to the Owner's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by the Owner in its sole discretion and determination.

§ 7.13 ERRORS AND OMISSIONS BY THE ARCHITECT

Construction Change Orders, or individual portions thereof made necessary by errors or omissions of the Architect and its consultants calculated at full value of the Change Order or portion thereof as a result of the error or omission will be paid through the Owner's budget without financial obligation of the Architect up to (1%) one percent of the "Total Construction" line as shown on Control Budget included as Exhibit B. The Change Orders, or individual portions thereof, within this contractual limit will accrue in order of Change Order approval date. In the case of any Change Orders, or individual portions thereof made necessary by the errors or omissions of the Architect and its consultants calculated at full value of the Change Order or portion thereof as a result of the error or omission in aggregate above (1%) one percent of the amount as shown in the "Total Construction" line of the Control Budget, Exhibit B, the Architect shall compensate the Owner for the difference between the amount of the Change Order, or individual portions thereof, and what the Owner would have paid had the error or omission not occurred. This difference will include the entire cost of removing work if required to remedy the error or omission. The difference will also include the entire cost of any other extra work that is required because of the error or omission if the Owner receives no substantial benefit from the required extra work. If the error or omission is discovered after bids are received and the contracting team has been selected, the minimum assumed premium, and therefore reimbursement

from the Architect, for not bidding the specific work, required as a result of the error or omission will be (20%) twenty percent of the amount of the Change Order, or individual portions thereof. Change Orders, or individual portions thereof, made necessary to various contractors or subcontractors for work reassigned from another contract or assignment within the complete set of construction documents will not be considered an error or omission for purposes of this paragraph. In any case, the Architect will not be additionally compensated for services related to any Change Order, or individual portions thereof, made necessary by the Architect or its consultants' error or omissions.

7.14 AUDIT

Architect shall maintain books, records, and other compilations of data pertaining to its activities pursuant to this Agreement to the extent and in such detail as to properly substantiate claims for payment and Architect's performance of its duties under the Agreement. All such records shall be kept for a period of seven (7) years, starting on the first day after final payment under the Agreement (the "Retention Period"). If any litigation, claim, negotiation, audit, or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the audit or other action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. MassCEC or the Commonwealth or any of their duly authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy at reasonable expense, the books, records, and other compilations of data of Architect which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not expressly permitted under this Agreement, Architect shall refund to MassCEC the amount determined by such audit within thirty (30) days of Architect's receipt of such audit and demand.

7.15 PUBLIC RECORDS AND CTHRU:

As a public entity, Owner is subject to the Commonwealth's Public Records Law, codified at M.G.L. c. 66 (the "Public Records Law"). Architect acknowledges and agrees that any documentary material, data, or other information submitted to Owner are presumed to be public records. An exemption to the Public Records Law may apply to certain records, including materials that fall under certain categories of a statutory or common law exemption, including the limited exemption set forth in General Laws Chapter 23J, Section 2(k) regarding certain types of confidential information submitted to Owner by an applicant for any form of assistance. Architect acknowledges and agrees that Owner, in its sole discretion, shall determine whether any particular document, material, data, or other information is exempt from or subject to public disclosure. Owner urges Architect to carefully consider what documents, materials, data, and other information it submits to Owner in connection with this Agreement. Architect agrees and acknowledges that MassCEC shall have the right to disclose the name of Architect and/or payee, the amount of any payments under this Agreement and any other information it may deem reasonably necessary on CTHRU, the Commonwealth's online database of state spending, or any other applicable state spending website

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 8.1 INSURANCE

§ 8.1.1 The Architect shall maintain at the Architect's expense, and shall file with the Owner a certificate evidencing, Professional Liability Insurance issued by an insurance company acceptable to the Owner having minimum limits as set forth in Section 2.5. Such Errors and Omissions (a/k/a Professional Liability) Insurance shall remain in full force and effect from the date hereof until substantial completion of the Project and for a period of six (6) years thereafter. Architect shall provide at least thirty (30) days' prior written notice to the Owner before cancellation, expiration without renewal, or amendment of any such policies. The Architect shall also maintain statutory Worker's Compensation coverage, and Employer's Liability Insurance Coverage with a minimum amount as set forth in Section 2.5; and Automobile Liability, Commercial General Liability and Valuable Papers policies with companies and in forms reasonably acceptable to the Owner (provided that the minimum limits of coverage for commercial general liability and automobile liability shall be not less than those set forth in Section 2.5). The Architect shall require its engineers, consultants and other professionals employed by it in connection with the Project to maintain similar insurance coverages as Architect is required to maintain under this Agreement in amounts acceptable to Owner. The Owner and such other parties as the Owner shall reasonably require shall be endorsed as additional insureds on the Architect's and Architect's engineers, consultants, and other professionals'

automobile and commercial general liability policies for occurrences arising out of the Project or this Agreement, which policies shall have deleted the owned property exemption as to Owner's and any additional insured's property; and the Architect, and each of the Architect's engineers, consultants and other professionals, shall list the Project as a covered project under its Professional Liability Insurance Policy. Upon request, the Architect shall deliver true copies of the aforementioned insurance policies to the Owner. The Architect shall provide the Owner with certificates evidencing all of the foregoing insurance at the execution of this Agreement and on an annual basis thereafter, or upon request by the Owner. All such policies shall include a waiver of subrogation rights against Owner by the insurer.

§ 8.2 INDEMNIFICATION

The Architect, at its expense, shall, to the fullest extent permitted by Law, indemnify and hold harmless the Owner and its successors and assigns and their respective officers, employees and representatives, from and against any and all losses, damages, liabilities and expenses, including, without limitation, loss of use, reasonable defense costs, and attorney's fees, whether or not caused in part by a party indemnified hereunder, but solely to the extent the same arise out of or result from any negligent act, error or omission, of the Architect or the Architect's Consultants in performance of this Agreement. The Architect shall cause this indemnity obligation to be insured under its Commercial General Liability and Professional Liability insurance policies, as applicable. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Owner which would otherwise exist. The Owner shall endeavor to give the Architect timely notice of any claim threatened or made, or suit instituted against it, which could result in a claim for indemnification hereunder provided, however, that lack of or delay in such notice shall not be a waiver of the Architect's indemnification of the Owner. The extent of the foregoing indemnification and hold harmless agreement shall not be limited by any provision of insurance required pursuant to this Agreement and shall survive the termination of this Agreement.

§ 8.3 PROJECT TEAM

The Architect agrees to staff the Project with a sufficient number of qualified personnel (the "Core Project Team") to assure at all times effective and timely production, management administration and superintendence with respect to the services to be provided by the Architect under this Agreement. The Core Project Team will include those positions and individuals identified in Schedule 12.4 attached to this Agreement. Any additional members of the Core Project Team shall be subject to Owner's prior written approval, and no member of the Core Project Team shall be replaced (except in the case of death, retirement or withdrawal from Architect or disability) without Owner's prior written consent. The Owner may require replacement of any member of the Core Project Team, and may require increased levels of staffing by the Architect if necessary to achieve proper and constructive production, management administration and superintendence. If the Architect disagrees with any direction of the Owner with respect to staffing, it shall comply with the direction pending resolution of the dispute.

§ 8.4 EXHIBITS AND SCHEDULES

The following Exhibits and Schedules are attached to and incorporated into this Agreement, in addition to other Exhibits listed where applicable:

Exhibit ___: Architect's Team and Organizational Chart
Exhibit ___: Schedule of Hourly Rates

§ 8.5 The Architect shall at all times assist, cooperate and work closely with the Owner's representatives during each phase of the Architect's services, so as to: (i) obtain the Owner's review and input; (ii) facilitate the review and preparation of estimates of Cost of the Work by the Owner or its consultants at various stages of design; and (iii) promote the best interests of the Owner. Without limitation, the Architect shall furnish design studies and design development documents to the Owner at intervals appropriate to the progress of each Design Phase of the Architect's services (whether for the Project or for a particular Project Phase), and at the completion of each Design Phase (whether for the Project or for a particular Project Phase), as requested by Owner.

§ 8.6 The Architect shall prepare all Drawings and Specifications in accordance with, and shall otherwise perform its services during all phases of the Architect's services under this Agreement, in a manner consistent Standard of Care and this Agreement.

§ 8.7 Architect shall, as part of its Basic Services, provide usual and customary assistance to Owner in the utilization of equipment and systems, including, without limitation, presence at testing, adjusting and balancing and commissioning (including both review of reports and site visits).

§ 8.8

§ 8.8.1 The Architect shall, consistent with the Standard of Care required hereunder, be responsible for the adequacy, safety of the design and overall integrity and coordination of the design of the Project, including but not limited to the structural, mechanical and electrical design of the Project. The Architect shall perform services consistent with the Standard of Care under this Agreement and prepare all Drawings, Specifications and other design information for the Project to comply with: (i) prevailing interpretations of all applicable federal, state and municipal laws, codes, regulations, statutes, ordinances, rules, orders, decrees and directives, including, without limitation, the Americans with Disabilities Act and the Accessibility Guidelines relating thereto and all other federal, State or local architectural barriers laws, codes, regulations, statutes, ordinances, rules, orders, decrees and directives and the requirements of Owner's fire insurance underwriters, (collectively, "Laws") at the time the Architect's services are performed, and (ii) all conditions, restrictions or requirements imposed by the terms of, or applicable by reason of, applicable governmental or third-party permits, approvals, review processes, consents, waivers, agreements and notices with respect to the Project, including, without limitation, any applicable building permits and any such items listed on Schedule 8.8.1 attached hereto (collectively, "Permits"). Architect shall, as part of its Basic Services, diligently investigate all Laws and all Permits applicable to the Project, and shall advise Owner on design issues relating to the design's compliance with Laws and relating to obtaining all Permits required for the Project under and in compliance with Laws. Without limitation, the Architect shall use efforts consistent with the Standard of Care to furnish designs, Drawings, Specifications, information and materials which will be approved by or (only with Owner's prior written approval) are capable of obtaining variances from, all governmental authorities responsible for issuance of such Permits. Following the issuance of the applicable building permit authorizing the Work defined in a particular design, Drawing or Specification, the Architect shall advise the Owner of any alterations or changes required in the Contract Documents by any change in applicable Laws affecting the design of such Work. The Architect shall at all times assist, cooperate and work closely with representatives and contractors, consultants and other professionals employed in connection with the Project by governmental authorities to ascertain and comply with the requirements imposed by such governmental authorities.

§ 8.8.2 Without limitation of the provisions of the foregoing Subparagraph 8.8.1, Architect shall, as part of its Basic Services hereunder, design and size all building systems for the Project and the connections and renovations to any existing facilities to which it may connect. Without limitation of the foregoing, Architect shall use efforts consistent with the Standard of Care to design the Project in a manner which will minimize disruption or interruption of services for the project and any existing facilities to which it may connect both during the Construction Phase and when the respective building systems therefor are connected.

§ 8.8.3 If required by Owner, the Architect, through and with a retained specialty consultant, shall lead a systematic, interdisciplinary "sustainable," "green," or "high-performance" design process engaging all members of the design team, Owner, and Owner's consultants, including a preconstruction Services Construction Manager in idea generation, materials and systems research, design options generation, analysis, detailed design, documentation, construction observation, commissioning, and training of Owner's operations personnel in an attempt to optimize actual performance of the Project in measurable ways against goals established early in this process. Services shall be conducted in a way consistent with the requirements of filing for a U.S. Green Building Council LEED Certification; provided, however, that if actual filing for a LEED Certificate is directed by the Owner, the filing process shall be treated as an Additional Service.

§ 8.9 The Owner's review, approval, acceptance of or payment for services under this Agreement, including without limitation Owner's approval of any staff or plans, shall not operate to make the Owner liable for any of Architect's obligations under this Agreement or as a waiver of any rights, warranties or indemnities under this Agreement. The Architect shall be and shall remain liable to the Owner for all of its obligations hereunder and for all damages incurred by the Owner as the result of the Architect's negligent failure to perform in conformance with the terms and conditions of this Agreement (subject to the exception created by Section 4.1.3). The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights or remedies provided by law or for any breach of this Agreement.

§ 8.10 If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby. The article and paragraph headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation of the provisions of this Agreement. Time is of the essence with respect to the performance by the Architect of its obligations under this Agreement. Time limits specified in this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

§ 8.11 The Architect shall consult with the Owner and make recommendations for the Owner's approval of engineers and consultants for the Project. Certain engineers and consultants shall be engaged by the Architect ("Architect's Consultants") and certain engineers and consultants shall, if necessary, be engaged by the Owner ("Owner's Consultants"), as described in this Agreement. Except as otherwise expressly provided in this Agreement, the services of Architect's Consultants shall be provided as a part of the Architect's Basic Services. All Architect's Consultants shall be subject to the prior written approval of the Owner. The Architect's Consultants specifically named in this Agreement have been approved by the Owner. The proposed fees for any Architect's Consultants engaged by the Architect to furnish Additional Services shall be subject to the prior written approval of the Owner. Neither the engagement by the Architect of engineers and consultants, nor the Owner's participation in the selection or approval of such engineers and consultants, shall relieve the Architect of its full responsibility for the selection of engineers and consultants, the performance and coordination of the services specified in this Agreement and the completeness, accuracy and coordination of all design documents.

§ 8.11.1 The consulting agreements with each of the Architect's Consultants (each an "Architect's Consultant Agreement") shall: (1) be in a form acceptable to the Owner; (2) be written for the intended benefit of the Owner; (3) expressly name the Owner as a third party beneficiary; (4) incorporate by reference the provisions of this Agreement insofar as they describe the Architect's obligations to the Owner; and (5) be (and hereby are) collaterally assigned to the Owner, whether any such Architect's Consultant Agreement is now in effect or shall be executed after the date hereof. The assignment set forth in the foregoing clause (5) shall be effective immediately; provided, however, that the Owner shall forbear from exercising its rights under such assignment, and shall not have any obligations under such assignment or any underlying Architect's Consultant Agreement, unless and until the first to occur of (i) the Bankruptcy (as such term is hereinafter defined) of the Architect, or (ii) the date that the Owner gives notice to the Architect and any applicable Architect's Consultants of Owner's election to terminate this Agreement in accordance with the terms hereof and to terminate its forbearance with respect to the assignment of any applicable Architect's Consultant Agreement(s), whereupon the Owner's forbearance shall automatically terminate. In the event of: (1) the Bankruptcy of the Architect or (2) Owner's election to so terminate this Agreement and such forbearance, the applicable Architect's Consultants shall then perform directly for the Owner all of the services required under the respective Architect's Consultant Agreements. The Architect shall assist the Owner and the Architect's Consultants as reasonably necessary to affect such a transition.

§ 8.11.2 For the purposes of this Agreement, the term "Bankruptcy" shall mean that: (1) the Architect files a petition under Chapter 7 or Chapter 11 of the United States Bankruptcy Code (or any similar act), (2) the Architect has filed against it a petition under Chapter 7 or Chapter 11 of the United States Bankruptcy Code (or any similar act) which is not dismissed or withdrawn within thirty (30) days; (3) the Architect files a petition or answer seeking, consenting, or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future bankruptcy code or any other bankruptcy or insolvency statute or law of any jurisdiction, or shall seek, or consent to, or acquiesce in, the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of the Architect or any substantial part of its properties; (4) the Architect shall have filed against it any petition described in the foregoing clause (3) or imposed upon it the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official described in said clause (3), and such petition or appointment is not dismissed or withdrawn within thirty (30) days; or (5) Architect shall become insolvent, or (6) Architect is not paying its debts as they become due.

§ 8.11.3 In the event of the termination of Owner's forbearance to exercise its rights under the foregoing assignment to the Owner of any Architect's Consultant Agreement, no Architect's Consultant whose Architect Consultant's Agreement is so assigned to the Owner shall have any claim for payment against the Owner for work performed by such Architect's Consultant prior to the date that Owner's forbearance is terminated, or any claim against the Owner related to or arising from events occurring prior thereto, and the Owner shall be liable to such Architect's Consultant only for obligations arising after the date that Owner's forbearance is terminated. Without limitation of the foregoing, Owner shall have the right to terminate any Architect's Consultant Agreement at any time on or after the

date that such forbearance is so terminated with or without cause. Upon such termination, Owner shall pay the applicable Architect's Consultant for services performed and reimbursable expenses incurred after the date that such forbearance was terminated and prior to the date of termination of the Architect's Consultant Agreement in accordance with the terms of the applicable Architect's Consultant's Agreement.

§ 8.11.4 Any agreement entered into by the Architect with any Architect's Consultant shall be subject to this Agreement and shall so provide, and shall expressly incorporate the terms of this Paragraph 8.11.

§ 8.12 All notices or other material communications hereunder to either party shall be in writing and shall be delivered by hand, facsimile or by U.S. Mail or by express overnight delivery service providing evidence of receipt. Such notices or communications shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the third business day after the date when deposited in the United States mail postage prepaid. Notice or other communications hereunder shall be addressed as hereinafter specified as follows:

If to Owner:

With a copy to Owner's Representative as follows:

With a copy to:

If to Architect:

§ 12.13 The Schedule attached hereto as Schedule 12.13, if any, sets forth the time periods in which the Architect is required to take certain actions pursuant to this Agreement (the "Architect's Time Limits"). Notwithstanding anything to the contrary contained in this Agreement, with regard to any action, response, submittal, notification, review period or the like that is addressed in Schedule 12.13, the Architect shall comply with the Architect's Time Limits set forth therein.

»

ARTICLE 9 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B102™-2017, as modified, Standard Form Agreement Between Owner and Architect
- .2 AIA Document B201™-2017, as modified, Standard Form of Architect's Services: Design and Construction Contract Administration
- .3 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .4 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[« »] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

«[Exhibit List to be finalized at execution]»

.4 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

AIA Document B201™-2017, as modified, Standard Form of Architect's Services: Design and Construction Contract Administration

Owner's Request for Qualifications

Architect's Response to Request for Qualifications

AIA Document A201-2017, modified, General Conditions of the Contract for Construction

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

ARCHITECT (Signature)

« »« »

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