

BOARD OF SUPERVISORSDistrict 1 | **Stacey Walker**District 2 | **Ben Rogers**District 3 | **Louis J. Zumbach****JEAN OXLEY LINN COUNTY PUBLIC SERVICE CENTER**

935 2ND ST. SW

CEDAR RAPIDS, IA 52404

PH: 319-892-5000 | FAX: 319-892-5009

LinnCounty.org

**LINN COUNTY BOARD OF SUPERVISORS
MEETING AGENDA**

Monday, March 15, 2021

11 a.m.

Formal Board Room—Jean Oxley Public Service Center
935 2nd St. SW, Cedar Rapids, IA**Call to Order****Public Comment: Five Minute Limit per Speaker**

This comment period is for the public to address topics on today's agenda.

Minutes

Discuss and decide on meeting minutes.

Discuss a Memorandum of Understanding (MOU) between Linn County and the Mental Health/Disability Services of the East Central Region (ECR).

Discuss a Vacancy Form requesting a Part time Supervisor for Juvenile Detention & Diversion Services.

Discuss a Vacancy Form requesting a Clerical Specialist for Public Health.

Discuss and decide on signature for a task order with Tidal Basin for services to assist with FEMA claim as it pertains to funding for Covid reimbursements under the Public Assistance program.

Discuss a Solar Lease and Easement Agreement between Linn County, Iowa and Boulevard Associates, LLC related to a proposal to locate all or part of a solar-powered electrical power generation and transmission project known as the Rising Sun Energy Center on Linn County-owned land located near the intersection of Hollenbeck Road and Power Plant Road, north of Palo.

Discuss a Memorandum of Solar Lease and Easement Agreement between Linn County, Iowa and Boulevard Associates, LLC related to a proposal to locate all or part of a solar-powered electrical power generation and transmission project known as the Rising Sun Energy Center on Linn County-owned land located near the intersection of Hollenbeck Road and Power Plant Road, north of Palo.

Discuss and decide on a Resolution Setting a Public Hearing to Consider a Solar Lease and Easement Agreement.

Discuss a proposed professional services Agreement between Linn County and Martin Gardner Architecture, PC for derecho-related evaluations, assessments, and damage reports on Linn County-owned properties

Public Comment: Five Minute Limit per Speaker

This is an opportunity for the public to address the board on any subject pertaining to board business.

Payroll Authorizations

Discuss and decide on Employment Change Roster (payroll authorizations).

Claims

Discuss and decide on claims.

Correspondence**Legislative Update****Appointments****Adjournment**

To adhere to social distancing requirements, Linn County employees and the public may participate in this meeting as follows:

- 1) Conference call—telephone number 1-800-945-0974, access code 501116
- 2) Email questions or comments prior to or during the meeting to: bd-supervisors@linncounty.org

For questions about meeting accessibility or to request accommodations to attend or to participate in a meeting due to a disability, please contact the Board of Supervisors office at 319-892-5000 or at bd-supervisors@linncounty.org.

This Memorandum of Understanding (hereinafter “MOU”) is entered into between Linn County Juvenile Detention Center and Mental Health/Disability Services of the East Central Region (ECR).

- I. **Funding of Mental Health and Disability Services for Coronavirus Disease 2019 (COVID-19) Relief.** In recognition that ECR has received funding from the Coronavirus Relief Fund (CRF) under the CARES Act, this MOU establishes an agreement between Linn County Juvenile Detention Center and ECR for the funding of COVID-19 related expenditures for mental health and disability services. The CARES Act requires that payments from CRF only be used to cover expenses that:
- i. Are necessary expenditures incurred due to the public health emergency with respect to COVID-19.
 - ii. Are not accounted for in the budget approved as of March 1, 2020.
 - iii. Are incurred between March 1, 2020 and June 30, 2021.
 - iv. Are expenses that have not been reimbursed from another source.

In consideration, the following responsibilities are assumed by the participating agencies:

a. **Linn County Juvenile Detention Center Responsibilities.** Linn County Juvenile Detention Center hereinafter referred to as Contractor agrees to:

- i. Upon receipt of this agreement, submit an invoice for 50% of the approved amount to claims@ecriowa.us OR by mail to 210 5th Avenue NE, Independence, Iowa 50644.
- ii. Submit a final invoice for the remaining 50% and all receipts for funds spent to claims@ecriowa.us no later than June 11, 2021. **All funds not requested by this date will be forfeited by the requesting entity.** If any funds were not expended by the date of the invoice, but will be spent by June 30, a note indicating this amount should be included on the final invoice.
- iii. Notify ECR by **June 11, 2021 (06/11/21)** if 100% of the approved funds will not be expended and return, if any, all unspent amounts, to ECR by **06/11/21**, by mail to: 855 S. Dubuque St., Ste. 202B, Iowa City, IA 52240.
- iv. Provide information to ECR, as requested regarding the service category or population that will benefit from the award.
- v. Keep detailed records and receipts for five years that shall be able to show how funds were expended.
- vi. Provide the detailed records and receipts, if requested, to ECR by the end of the next business day or sooner if necessary due to an onsite or electronic ECR, state or federal audit.
- vii. Reimburse the funds to ECR if the contractor uses the funds for a purpose that a state or federal audit identifies was not allowable.
- viii. Correct identified deficiencies or findings by ECR staff and submit progress reports to any such corrective action plan.
- ix. Submit a W9 form if a contract with ECR has not already been established, maintain insurance and be an independent contractor according to the terms of the MOU.
- x. Provide MH/DS, or services related to individuals’ mental health or disability, to residents of ECR that are the result of or exacerbated by COVID-19. Goods purchased must be used to mitigate the effects of the pandemic.

b. **ECR Responsibilities.** ECR agrees to:

- i. Pay 50% of requested funds when invoiced after the proposal and MOU are approved.

- ii. Follow the ECR Management Plan Policies and Procedures for payment of services: J. Service Provider Payment Provisions (p. 27).

II. Termination. This MOU will end Jun 30, 2021 unless terminated earlier in writing by any party for its convenience upon sixty (60) days prior written notice to the other party. The agreement is subject to revision due to legislation, updated federal or state guidance, change in operating practices and policies of the involved parties, or other factors, as agreed to by the involved parties. It may be amended by mutual written agreement of the parties.

III. Indemnification. Each party agrees to hold harmless all other parties (including its officers, agents and employees) from and against any and all claims, demands, liabilities and costs incurred by the indemnified party, including reasonable attorney's fees, directly or indirectly arising out of or in connection with the indemnifying party's performance, or any service, or any other act or omission by or under the direction of the indemnifying party, or its officers, agents or employees.

IV. Notices. All notices related to this MOU shall be addressed as follows:

- a. To: ECR Chief Executive Officer
210 Jones Street
Suite 203
Dubuque, Iowa 52001
- b. To: Linn County Juvenile Detention Center

V. Service Definitions and Rates

Project Description	Units & Rate Each (if applicable)	Total Amount
Outpatient Therapy in the Juvenile Detention Setting	\$1,800 Monthly (February – June 2021)	\$9,000

OTHER TERMS:

This agreement has been executed by the parties hereto, through their duly authorized officials, and the effective date of this agreement is the 8th day of February.

ECR Chief Executive Officer:

Provider:

By: *Mae Hingtgen*

By: _____

Print Name: Mae Hingtgen

Print Name: _____

Print Title: ECR Chief Executive Officer

Print Title: _____

Date: 02/08/2021

Date: _____

Submit invoices to claims@ecriowa.us OR by mail to 210 5th Avenue NE, Independence, Iowa 50644.

LINN COUNTY HUMAN RESOURCES DEPARTMENT
JEAN OXLEY LINN COUNTY PUBLIC SERVICE CENTER
935 2ND ST. SW
CEDAR RAPIDS, IA 52404
PH: 319-892-5120 | FAX: 319-892-5129

LinnCounty.org



VACANCY FORM

SELECT ONE:

☒ NEW POSITION

☐ REPLACEMENT

REPLACES: _____

SELECT ONE:

☐ NEW JOB CLASSIFICATION

☒ EXISTING JOB CLASSIFICATION

JOB TITLE: Part-time JDDS Supervisor

DEPARTMENT: JDDS

SHIFT/HOURS: Sunday & Monday 2-11pm, Wednesday 2-7pm

VACANCY DATE: 3/9/21

NUMBER OF POSITIONS: 1

REASON TO ADD NEW POSITION (if applicable):

☒ BUDGET OFFER

☐ GRANT FUNDING

☐ OTHER: _____

NEW POSITION FUNDING SOURCE(S):

The position has been approved for FY22, the JDDS budget will absorb the cost of beginning the position as soon as possible.

POST TO INSIDE: ☐ YES ☒ NO

ADVERTISE: ☒ YES ☐ NO

IF NO, GIVE EXPLANATION (i.e. not filling due to operational needs): This is a management position so no posting is necessary.

POSITION TYPE:

☐ FULL-TIME ☒ PART-TIME 23 # of hours/week ☐ TEMPORARY/SEASONAL

☐ ON-CALL/SUBSTITUTE ☐ GRANT-FUNDED

☐ BARGAINING UNIT: ☐ Clerical ☐ Maintenance ☐ Para Professional ☐ Professional
☐ Attorneys ☐ Conservation ☐ Sergeants ☐ PPME

☒ NON-BARGAINING UNIT (Management and Confidential Employees)

APPROVED BY: [Signature]
DEPARTMENT HEAD (original signature required)

3-8-21

DATE

FOR HUMAN RESOURCES DEPARTMENT USE ONLY:

PAY GRADE: _____ STARTING SALARY: _____

HR DIRECTOR COMMENTS: _____

FINANCE/BUDGET DIRECTOR COMMENTS: _____

APPROVED BY: [Signature]
HUMAN RESOURCES DIRECTOR

3-8-21

DATE

APPROVED BY: Dawn Jindrich
FINANCE/BUDGET DIRECTOR

DATE

APPROVED BY: _____
CHAIRPERSON/BOARD OF SUPERVISORS

DATE

LINN COUNTY HUMAN RESOURCES DEPARTMENT
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VACANCY FORM

SELECT ONE:

☒ NEW POSITION

☐ REPLACEMENT

REPLACES: _____

SELECT ONE:

☐ NEW JOB CLASSIFICATION

☒ EXISTING JOB CLASSIFICATION

JOB TITLE: Clerical Specialist

DEPARTMENT: Public Health

SHIFT/HOURS: 8:00 am - 4:30 pm

VACANCY DATE: ASAP

NUMBER OF POSITIONS: 1

REASON TO ADD NEW POSITION (if applicable):

NEW POSITION FUNDING SOURCE(S):

☐ BUDGET OFFER

Existing department funding for FY22. Use enterprise funding for remainder of FY21.

☐ GRANT FUNDING

☐ OTHER: _____

POST TO INSIDE: ☒ YES ☐ NO

ADVERTISE: ☒ YES ☐ NO

IF NO, GIVE EXPLANATION (i.e. not filling due to operational needs): _____

POSITION TYPE:

☒ FULL-TIME ☐ PART-TIME _____ # of hours/week ☐ TEMPORARY/SEASONAL

☐ ON-CALL/SUBSTITUTE ☐ GRANT-FUNDED

☒ BARGAINING UNIT: ☒ Clerical ☐ Maintenance ☐ Para Professional ☐ Professional

☐ Attorneys ☐ Conservation ☐ Sergeants ☐ PPME

☐ NON-BARGAINING UNIT (Management and Confidential Employees)

APPROVED BY: _____

DEPARTMENT HEAD (original signature required)

DATE

FOR HUMAN RESOURCES DEPARTMENT USE ONLY:

PAY GRADE: _____

STARTING SALARY: _____

HR DIRECTOR COMMENTS: _____

FINANCE/BUDGET DIRECTOR COMMENTS: _____

APPROVED BY: _____

HUMAN RESOURCES DIRECTOR

DATE

APPROVED BY: _____

Dawn Jindrich
FINANCE/BUDGET DIRECTOR

DATE

APPROVED BY: _____

CHAIRPERSON/BOARD OF SUPERVISORS

DATE

DR-4457-IA TASK ORDER

This Task Order dated February 26, 2021, is issued under the Agreement by and between Tidal Basin Government Consulting LLC ("Consultant"), and the County of Linn, Iowa ("Client"), dated December 20, 2020 ("Agreement"). The Consultant shall perform the Services on the Project as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it applies to the Project described below.

PROJECT NAME: **August 10, 2020 Severe Storms (DR-4457-IA)**

PART 1.0 PROJECT DESCRIPTION:

To provide grant administration and other professional services to assist in all matters dealing with FEMA's Public Assistance Program and to support the Client in their financial recovery efforts from the severe storms that struck Linn County, Iowa on August 10, 2020, Presidentially Declared Disaster DR-4457-IA.

PART 2.0 SCOPE OF BASIC SERVICES TO BE PERFORMED BY CONSULTANT ON THE PROJECT:

1. The Consultant shall perform work, as directed, for grant application, administration, and management services as described in Exhibit A – "Scope of Work" of the Contract Agreement (Attachment A).
2. The Consultant shall perform duties implementing a remote model/on-site as needed for this task order as described in the scope of work summary (Attachment B).
3. The Consultant will provide guidance on execution of the Client's role and responsibilities under the FEMA Public Assistance Program in compliance with the Stafford Act, Post- Katrina Emergency Management Reform Act of 2006, and the Sandy Recovery Improvement Act of 2013, applicable federal regulations and policies, and the administrative requirements of the State of Iowa.
4. The Consultant will assist the Client in developing and implementation appropriate document and information management to maximize opportunity for disaster relief funding.
5. The Consultant will meet often with Client to determine the Action Plan and keep the Client updated on progress of project development. The Client and Consultant will have an agreed upon weekly schedule meeting to discuss project status as well other important items, as necessary.
6. The Consultant will advise the Client regarding the eligibility of disaster-related losses and expenditures under the FEMA Public Assistance and Hazard Mitigation Programs.
7. The Consultant will make all reasonable efforts to track and document labor and expenditures for providing services under this Task Order in accordance with FEMA policy for reimbursement of costs of administering the Public Assistance Program

PART 3.0 DELIVERABLES AND ADDITIONAL SERVICES:

1. The Consultant will work with the Client to execute recovery from Presidentially Declared Disaster DR-4483-IA.
2. Maintain project document tracking system and matrix to support Client Project Worksheets (PWs) production, submittal, and payment.
3. Provide specific project work plans with specific project milestones, goals, and deliverables.
4. Gather with Client all documentation, and if needed, create documentation to support PW development.

5. Assist in development of PWs for Emergency Work and FEMA Category designations B.
6. Work with Client, FEMA, and the State to identify any potential outside funding sources such as the CARES Act.

PART 4.0 CLIENT'S RESPONSIBILITIES:

1. The Client will timely provide the Consultant with all documentation and information requested and make reasonable effort to provide access to Client representatives and staff as necessary to answer questions as needed.

PART 5.0 PERIODS OF SERVICE:

December 21, 2020 – December 31, 2021

PART 6.0 CONSULTANT'S COMPENSATION FOR SERVICES:

With the contract clauses and rates agreed to and signed on December 20, 2020 (Exhibit B – "Fee Structure") Tidal Basin proposes a Project Manager to be assigned to the Linn County, Iowa.

The estimated not-to-exceed limit is \$396,000 including labor related and non-labor related direct costs, as described, and outlined in table below.

The Project Manager to start on December 21, 2020 through December 31, 2021, minus holidays and weekends. The Not-To-Exceed costs are for labor related costs and non-labor related direct costs for the Project Manager.

Additional consultants will be added on Client's needs and agreed to with an amendment to this Task Order.

PART 7.0 EXECUTED PRIME AGREEMENT BETWEEN CONSULTANT AND CLIENT ATTACHED HERETO:

IN WITNESS WHEREOF, the parties have executed this Task Order as of the day and year first written above.

COUNTY OF LINN COUNTY
"CLIENT"

TIDAL BASIN GOVERNMENT CONSULTING, LLC
"CONSULTANT"

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

SOLAR LEASE AND EASEMENT AGREEMENT

1. **Parties.** This Solar Lease and Easement Agreement ("**Agreement**") is made and entered as of the ____ day of _____, 2021 ("**Effective Date**"), by and between the Linn County, Iowa ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company ("**Operator**"), which are sometimes individually referred to as a "**Party**" and collectively as the "**Parties**".

2. **Project.** This Agreement relates to the solar-powered electrical power generation and transmission project known as the "Rising Sun Energy Center" to be located in Linn County, Iowa ("**Project**"), which may be wholly or partially located on the Owner's property legally described on the attached **Exhibit A** to this Agreement ("**Owner's Property**"). Upon Operator's exercise of the Option (as defined below), the Project shall include (i) the Lease of Owner's Property described in Section 4 (ii) the Easements referenced in Section 5 that are located on the Owner's Property, and (iii) the Improvements referenced in Section 8 to be constructed on Owner's Property. The Lease, Easements and Improvements are sometimes collectively referred to as the "**Operator Property**".

3. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the Lease and Easements referenced in Sections 4 and 5 in accordance with the following terms and conditions. Operator shall be entitled to acquire the Lease and the Easements in their entirety or in part, as Operator deems appropriate.

3.1 **Option Term.** The period during which Operator may exercise the Option shall be for a term of five (5) years, commencing on the Effective Date ("**Option Term**").

3.2 **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the Option Payment set forth in **Exhibit D**.

3.3 **Use of Owner's Property.** During the Option Term, Operator and its employees, agents and contractors shall have a right to enter upon the Owner's Property and the right of ingress and egress over and across the Owner's Property for the purposes of (i) surveying the Owner's Property; (ii) performing such other tests and studies as Operator may desire in connection with the Option, including, without limitation, environmental, avian and cultural resource assessments, and geotechnical, foundation and soil tests; provided that such activities do not unreasonably interfere with Owner's use of the Owner's Property; and (iii) installing, maintaining, operating, inspecting and removing one or more weather related instruments ("**Weather Instrument**") and fencing of said Weather Instrument and including the performance of all tests and studies associated therewith. Owner shall not permit any other individual or entity except Operator or its affiliates to install a Weather Instrument on Owner's Property.

3.4 **Right to Grant Option.** Owner warrants and represents to Operator that (i) the statements in Section 9 concerning Owner's title to the Owner's Property are true and correct; (ii) Owner has the authority to grant this Option to Operator without the consent or approval of any other party; and (iii) there are no other existing options, rights of first refusal, contracts to

purchase, leases or mortgages that would prevent Operator from exercising its rights with respect to the Option.

3.5 **Exercise of Option.** Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the Commencement Date referenced in Section 6.1.1. On the Commencement Date, the Lease and Easements referenced in Sections 4 and 5 shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of this Agreement with respect to such Lease and Easements and all rights and obligations relating thereto.

3.6 **Termination of Option.** If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as the optionee shall automatically terminate.

4. **Lease.** Upon exercise of the Option by Operator, Owner leases to Operator, and Operator leases from Owner, Owner's Property for the Lease and Easement Term (defined in Section 6.1) in accordance with the terms and conditions of this Agreement ("**Lease**"), which Lease grants Operator and its agents, contractor's, and employees the right to use the Owner's Property for the following permitted uses:

4.1 **Construction Right.** Operator leases Owner's Property for the purpose of constructing, operating, maintaining, repairing, replacing, and removing all or any part or component of the Improvements whether located on Owner's Property. Operator may exercise its right to use all or any part of the Owner's Property as and when Operator deems it necessary or advisable to do so to perform the activities for which this right is granted, including, without limitation, staging areas and parking for Operator's employees.

4.2 **Access Right.** Operator leases Owner's Property for unobstructed vehicular and pedestrian access and ingress to and egress from the Improvements, Owner's Property and any public roadways, and to construct, maintain, and utilize Roadway Improvements on the Owner's Property. Owner shall not permit others to obstruct or damage the roads or Roadway Improvements located on the Owner's Property or in any other way interfere with Operator's rights under this right. Operator shall repair any damage done to Roadway Improvements which result from use by Operator, its agents, servants or employees. Such roads shall be maintained in the condition necessary for use by Operator's equipment, and with regard to existing roads, shall be maintained in at least the condition that existed prior to Operator's use.

4.3 **Solar Panels Right.** Operator leases Owner's Property for Operator to construct, operate, replace, relocate, remove, and maintain Solar Panels and the appurtenant Collection Facilities, together with associated roads and parking areas on Owner's Property.

4.4 **Collection Facilities Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Collection Facilities on and under the Owner's Property.

4.5 **Substation Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove one or more Substations on Owner's Property.

4.6 **Telecommunication Right.** Operator leases Owner's Property for Operator to construct, operate, maintain, replace, relocate or remove Telecommunication Facilities on and under the Owner's Property.

4.7 **Weather Instrument Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain a Weather Instrument and the appurtenant Collection Facilities on Owner's Property.

4.8 **Battery Facilities Right.** Operator leases Owner's Property in order to construct, operate, replace, relocate, remove, and maintain one or more Battery Facilities on Owner's Property.

5. **Grant of Easements.** Upon the exercise of the Option by Operator, Owner grants to Operator, and Operator accepts from Owner, for the Lease and Easement Term referenced in Section 6.1, the following easements over and across the Owner's Property in accordance with the terms and conditions of this Agreement. The following easements are for the benefit of Operator and Operator's agents, contractors and employees and located on the Owner's Property and are collectively referred to as the "**Easements**".

5.1 **Sun Non-Obstruction Easement.** Owner grants Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction over any portion of Owner's Property; cause a decrease in the output or efficiency of any Solar Panel or Weather Instrument; or otherwise interfere with Operator's operation of the Project or exercise of any rights granted in this Agreement (collectively "**Interference**"). This grant of the easement expressly includes the right of Operator to enforce Operator's rights, including the physical removal of trees or structures (except existing trees and structures) causing Interference to the Project contemplated by Operator. Operator shall notify Owner before making any such removals.

5.2 **Effects Easement.** Owner grants to Operator an easement over Owner's Property for visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

6. **Term.** The term of this Agreement ("**Term**") includes the Option Term referenced in Section 3.1, the Initial Lease and Easement Term as described in Section 6.1.1 and the Extended Lease and Easement Term as described in Section 6.1.2 (together, the Initial Lease and Easement Term and the Extended Lease and Easement Term, if applicable, is defined as the "**Lease and Easement Term**").

6.1 **Lease and Easement Term.**

6.1.1 **Initial Lease and Easement Term.** The initial term of the Lease and Easements shall commence on the date specified by Operator in the Option Notice ("**Commencement Date**"). The initial term of the Lease and Easements shall end thirty (30)

years after the Commencement Date (the "**Initial Lease and Easement Term**"), subject to the rights of renewal and termination as provided in this Agreement.

6.1.2 **Extended Lease and Easement Term.** Operator shall have the right to extend the Term of this Agreement for an additional term of ten (10) years each in accordance with the terms and provisions of this Agreement (collectively "**Extended Lease and Easement Term**") by providing written notice to Owner of Operator's intent to extend the Term within one hundred eighty (180) days of the end of the existing Term. Each Extended Lease and Easement Term shall begin on the expiration date of the Initial Lease and Easement Term or previous Extended Lease and Easement Term, as the case may be. During the Extended Lease and Easement Term, Operator shall pay Owner the amounts set forth in **Exhibit D** as the consideration for the Lease and Easements.

6.1.3 **Delays During Lease and Easement Term.** At Operator's option, the Term may be extended for a period of time equal to the period of time during which operation of the Project is delayed or suspended because of the occurrence of a Regulatory Suspension or Force Majeure, which are defined as follows:

(i) "**Regulatory Suspension**" shall mean the enactment or application of any law, order, rule, or regulation of the Iowa Utilities Board, Federal Energy Regulatory Commission, or other local, state, or federal government authority having jurisdiction over the Project or Operator, or the failure of any such governmental authority to issue an approval or permit pursuant to any such law, order, rule, or regulation, which results in the delay, interruption, or suspension of the production, sale or transmission of electricity from the Solar Panels; and

(ii) "**Force Majeure**" shall mean causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure, including but not limited to acts of God, labor unrest (including, but not limited to, slowdowns, picketing, boycotts or strikes), flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, vandalism, theft, the cutting of power, transmission or other lines, wires or cables to the Project by persons other than Operator's employees or contractors, epidemic, war, revolution, riot, civil disturbance, sabotage, change in law or applicable regulation subsequent to the Commencement Date and action or inaction by any federal, state or local legislative, executive, administrative judicial agency or body which in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

The Parties shall be excused from performing their respective obligations under this Agreement and shall not be liable in damages or otherwise if and to the extent that they are unable to so perform or are prevented from performing by a Force Majeure, provided that: (i) the non-performing Party, as promptly as practicable after the occurrence of the Force Majeure, but in no event later than thirty (30) days thereafter, gives the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure; (iii) the non-performing Party uses good faith and commercially reasonable efforts to remedy its inability to perform; and (iv) as soon as the non-performing Party is able to resume performance of its obligations excused as a

result of the occurrence, each Party shall give prompt written notification thereof to the other Party.

6.2 **Termination by Operator**. Provided Operator is not in default under any term of this Agreement, Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement, as to all or any part of the Operator Property. Termination shall be effective thirty (30) days after written notice of such termination to Owner. If Operator's notice is a full termination of the Operator Property, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination; (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Upon any such partial termination by Operator, the Parties shall be relieved of all further duties and obligations under this Agreement with respect to the portion thereof terminated by Operator, subject to the obligations and liabilities referenced in items (i) through (iii) above that shall continue to be applicable to the terminated portion of this Agreement. The Parties agree to execute an amendment to this Agreement evidencing such partial termination.

7. **Payments**. If Operator exercises the Option referenced in Section 3, Operator agrees to pay Owner the amounts set forth in **Exhibit D** as consideration for the Lease, Easements and Operator's other rights and interests in the Owner's Property.

8. **Improvements**. Operator shall have the right, at its sole cost and expense, to construct, install, maintain, use, operate, repair, replace, relocate and remove all facilities, structures, equipment, machinery, wires, conduit, cables, poles, materials and property of every kind and character required for the construction and operation of portions of the Project on the Owner's Property, including, but not limited to, the Solar Panels, Collection Facilities, Substations, Telecommunication Facilities, Weather Instruments, Roadway Improvements and Battery Facilities referenced in Sections 8.1 through 8.7 (collectively, the "**Improvements**").

8.1 **"Solar Panels"** shall mean any photovoltaic energy system designed for the generation of electrical power from the collection of sunlight, including without limitation, the photovoltaic panels, foundations, support structures, braces and related equipment.

8.2 **"Collection Facilities"** shall mean all Improvements whose purpose is to deliver electrical power generated by the Solar Panels to an electrical power grid or other system, including without limitation transformers, overhead and underground electrical collection lines, telecommunication lines, splice boxes and interconnection facilities.

8.3 **"Substations"** shall mean electrical lines, meters, monitoring and control equipment, switches, transformers, all structures, equipment, enclosures, fencing, security devices, and other electrical and communications equipment necessary to condition and increase the voltage of electricity generated by the Project to make it suitable for transmission on, and to deliver it to, Collection Facilities connected to an electric power grid or other system.

8.4 **"Telecommunication Facilities"** shall mean all Improvements whose purpose is to provide telecommunication services solely relating to the Project or any of Operator's solar

powered projects, including telephone, closed-circuit television, microwave, internet, computer data and other telecommunication services.

8.5 **"Weather Instrument"** shall mean instruments used primarily to gather and transmit sunlight and meteorological data relating to the Project, and includes the instrument's foundations, guy wires, sunlight and meteorological data acquisition equipment, power source, and any required data and electrical transmission lines.

8.6 **"Roadway Improvements"** shall mean all improvements that may be necessary to construct, maintain and repair any new and existing roadways and other means of ingress and egress over, across and along the Owner's Property, including paving or surfacing of the roadways with asphalt, gravel or other roadway materials, installation of road signs and the construction and installation of culverts, bridges, drainage ditches, gates, cattle guards and similar structures and facilities.

8.7 **"Battery Facilities"** shall mean a type of equipment that can be given a new charge by passing an electric current through it designed for the storage of electrical power including without limitation, batteries and other devices for storage of electrical energy, foundations, support structures, braces and related equipment.

8.8 **Ownership of Improvements.** Except as otherwise provided in Section 11.7, all Improvements shall at all times remain the property of Operator, and Owner shall have no right, title or interest therein. All Improvements constructed or placed on the Owner's Property by Operator during the Term of this Agreement may be repaired, replaced, relocated, removed, added to or expanded upon by Operator at any time during the Term of this Agreement. Owner expressly waives any statutory lien or common law liens on the Improvements to which Owner might be entitled.

8.9 **Construction Liens.** Operator shall not permit any liens arising out of Operator's use of the Operator Property under this Agreement to be filed against the Owner's Property. Operator shall, within sixty (60) days after it receives notice of the lien, provide a bond or other security that Owner may reasonably request, or remove such lien from the Owner's Property in the manner provided by applicable law.

8.10 **Location of Improvements.** The acreage required from the Owner's Property for the Improvements for which the Lease and Easements are being granted cannot be determined until the completion of Operator's inspection, testing, study and surveying of the Owner's Property during the Option Term. Operator will not install any Improvements in the Exclusion Area depicted in **Exhibit B-1** without obtaining the consent of Owner. Along with the Option Notice, Operator shall deliver to Owner a proposed plan of development showing the contemplated locations of the Improvements and a preliminary calculation of the acreage as determined by the area bounded by a perimeter fence required for the Project, which shall serve as the **Exhibit B-2** to this Agreement. During the final development and construction of the Project, such locations may need to be amended. Following construction of the Project, Operator shall provide Owner an "as-built" survey of all Improvements on Owner's Property and the final calculation of the acreage as determined by the area bounded by a perimeter fence required for

the Project, which shall serve as **Exhibit C** to this Agreement. Further, following construction, the Improvements may need to be relocated or rerouted by Operator, which Operator may perform, at any time during the Term of this Agreement, so long as the nature and extent of any such relocated or rerouted Improvements are not materially different and impose no materially greater burden on the Owner's Property than the original locations or routes, and so long as Operator takes commercially reasonable efforts to minimize disruption or inconvenience to Owner.

8.11 **Removal of Improvements.** Upon full or partial termination of any of the Lease Rights or Easements, Operator shall remove all Improvements and restore the area formerly occupied by the Improvements to substantially the same physical condition that existed immediately before the construction of the Improvements (the "**Removal Obligations**"). At Owner's request, all or any part of the Roadway Improvements may be left for use by Owner.

8.12 **Environmental and Educational Collaboration.** Operator agrees to consider design and management options supportive of environmental and educational benefit on the Owner's Property, including but not limited to: water quality improvements, use of native vegetation, use of alternative vegetation management options involving animal husbandry, and engaging in collaborative efforts with Owner and other educational institutions to conduct scientific research related to sustainable energy production, water quality, wildlife, native vegetation or other areas of study.

9. **Ownership and Title Matters.** Owner warrants and represents to Operator, both as of the Effective Date, and as of the Commencement Date as follows:

9.1 **Authority.** Owner represents and warrants that it is the holder of fee simple title and is the sole owner of the Owner's Property and has the unrestricted right and authority to sign this Agreement and to grant Operator the Lease and Easements and other rights granted in this Agreement. When signed by both Parties, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms.

9.2 **Other Agreements.** The Owner's Property is not subject to any other agreements, options, rights of first refusal or other prior right of any party to purchase, lease or acquire easements in the Owner's Property, or create any prior claim or right that would preclude or interfere with Operator's rights and interests under this Agreement and the Lease and Easements.

9.3 **Minerals.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, Owner owns all of the oil, gas and other minerals, and all rights thereto as on or under the Owner's Property.

9.4 **Owner Mortgage.** Except as disclosed by Owner to Operator at the time of the execution of this Agreement by Owner, there are no mortgages encumbering the Owner's Property ("**Owner Mortgage**").

9.5 **Notice and Opportunity to Cure.** If there is an Owner Mortgage encumbering Owner's Property and Owner receives from the holder thereof any notice that payments are

overdue, Owner shall notify Operator and each Operator Mortgagee (as defined at Section 13.1) by sending a copy of such overdue payment notice to Operator by the earlier of (i) five (5) days after receipt, or (ii) three (3) business days prior to the date by which a default under or in respect of such Owner Mortgage could occur. If Operator or any Operator Mortgagee determines that it would be in Operator's interest to make such payments to Owner Mortgagee on Owner's behalf, whether as a result of receiving such notice or otherwise, Operator shall have the right to make such payments and to credit the payments so made against the Annual Installment Payment next due under the Agreement.

9.6 **Subordination, Non-Disturbance & Attornment Agreement.** If there is an Owner Mortgage encumbering Owner's Property, Owner shall cooperate with Operator to obtain a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") in the form prepared and provided by Operator, from each Owner Mortgagee, pursuant to which such Owner Mortgagee agrees, among other things, not to disturb Operator's possession and use of the Owner's Property. Owner shall not incur any loss in income, expense, obligation or liability with regard to the SNDA. Operator shall, at its sole cost and expense, record each such SNDA in the Official Records of the County in which Owner's Property is located. If Owner fails to deliver a SNDA from each Owner Mortgagee, Operator may, at its sole option, either (i) terminate this Agreement immediately upon written notice to Owner, or (ii) take such action as Operator deems reasonably necessary to effect the rights granted to Operator hereunder, and offset all amounts expended in such efforts against the Annual Installment Payments and any other amounts due hereunder or in respect hereof.

10. **Representations and Warranties of Owner.** Owner hereby makes the following further representations and warranties both as of the Effective Date, and as of the Commencement Date:

10.1 **Physical Condition.** Owner has no knowledge of any existing physical conditions of the Owner's Property which would prevent, significantly restrict or make more expensive Operator's development of the Owner's Property for the purposes specified in this Agreement, or which could, with the passage of time, or the giving of notice, constitute a violation of any currently applicable governmental law, ordinance, order, rule or regulation.

10.2 **Legal Restrictions.** Owner has no knowledge of any law, regulation, ordinance or order of any local, state or federal governmental authority which would prohibit or significantly restrict Operator's development of the Owner's Property pursuant to this Agreement. This Agreement does not violate any contract, agreement, instrument, judgment or order to which Owner is a party or which affects the Owner's Property. To the best of Owner's knowledge, the Owner's Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Owner's Property.

10.3 **No Litigation.** No litigation is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Owner's Property. If Owner learns of any litigation or administrative action proposed, threatened or instituted with respect to the Owner's Property, Owner shall give Operator notice within thirty (30) days thereof.

10.4 **Survival.** The representations and warranties set forth in this Section 10 shall survive the execution and delivery hereof.

11. **Use, Operation and Maintenance.**

11.1 **Exclusive Use by Operator.** Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar solar-powered electrical power generation projects; (ii) to investigate, inspect, survey, and conduct tests of the Owner's Property, including, but not limited to, meteorological, environmental, archeological and geotechnical tests and studies; (iii) to use and convert all of the sunlight resources on the Owner's Property; and (iv) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

11.2 **No Required Installation or Operation.** Nothing in this Agreement shall be interpreted as imposing on Operator any obligation to install Solar Panels or other Improvements on the Owner's Property, or to operate the Project on the Owner's Property. Operator shall have the sole discretion to determine if and when any Solar Panels and other Improvements may be constructed on Owner's Property, and if and when to commence the operation of the Project on the Owner's Property.

11.3 **Permits and Approvals.** Operator shall be responsible, at its sole cost and expense, for obtaining any governmental permits and approvals necessary for the construction and operation of the Project and the construction and operation of the Improvements. Owner shall cooperate with Operator as necessary to obtain any governmental or utility approvals or permits, including, without limitation, signing any applications for such approvals, provided that Owner shall not incur any loss in income, expense, obligation or liability with respect to Operator obtaining such permits or approvals.

11.4 **Compliance with Laws.** Operator shall comply in all material respects with valid laws applicable to the Owner's Property and the Operator Property. Operator shall have the right, in its sole discretion and at its sole expense, in Operator's name to contest the validity or applicability to the Owner's Property and the Operator Property of any law, ordinance, statute, order, regulation, property assessment or the like made by any governmental agency or entity. Operator shall control any such contest and Owner shall cooperate with Operator in every reasonable way in such contest, provided that Owner shall incur no expense, obligation or liability with regard to such contest.

11.5 **Care and Appearance.** Operator, in its exercise of the lease, easement and other rights granted hereunder shall, at all times, maintain the Owner's Property and the Improvements in a reasonably neat, clean and presentable condition. Operator shall not willfully or negligently damage or destroy the Owner's Property and shall keep the Owner's Property clean and free of debris created by Operator, its contractors, or others brought on to the Owner's Property by Operator. Operator shall not use the Owner's Property for storage, except for materials,

construction equipment and vehicles directly associated with construction or maintenance of the Improvements on the Owner's Property or adjacent properties that are part of the Project.

11.6 **Fences and Gates.** At Owner's request, Operator shall repair or replace any fences, gates or cattle guards damaged or removed in connection with Operator's activities on the Owner's Property. Fences removed from the Owner's Property, if replaced, shall be re-built by Operator at its expense in mutually agreeable locations. All fence repair and construction shall be substantially similar to the construction of existing fences and cattle guards on Owner's Property. Any gates opened for access to Owner's Property by either Party shall be closed immediately after passing through so that livestock may not pass through. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Upon abandonment or termination of the rights granted to Operator in this Agreement, any fences, gates and cattle guards installed by Operator shall remain and become the property of Owner. To minimize the need for temporary fencing, Owner will cooperate with Operator to avoid pasturing animals on or near the Improvements during periods of construction, maintenance or removal activity by Operator. Owner will discuss with Operator what temporary fencing is necessary during the periods of construction, maintenance or removal activity by Operator.

11.7 **Roadway Maintenance and Repairs.** Operator agrees to maintain and repair all Roadway Improvements located on the Operator Property; provided, however, Owner shall reimburse Operator for any costs and expenses incurred by Operator to repair any damage or perform any special maintenance of the Roadway Improvements caused by Owner or any person using the Roadway Improvements with Owner's permission, other than Operator.

12. **Taxes.**

12.1 **Owner's Taxes.** Owner covenants and agrees to pay prior to delinquency all real and personal property and other taxes, general and special assessments, and other charges of every description ("**Taxes**") levied or assessed against the Owner's Property and all improvements thereon by governmental authorities, other than Operator's Taxes referenced in Section 12.2 (Taxes, excepting Operator's Taxes, are hereinafter referred to as "**Owner's Taxes**").

12.2 **Operator's Taxes.** Subject to timely receipt from Owner and/or appropriate governmental agency of the relevant statement for Taxes pursuant to this Section 12.2, Operator shall pay prior to delinquency any personal property taxes on Improvements and/or any taxes that were directly attributable to Improvements installed by Operator and all increases in the ad valorem property taxes levied against the Property that are assessed for the period from and after the date of this Agreement until the end of the Term hereof and are directly attributable to Improvements installed by Operator ("**Operator's Taxes**"). Operator shall not be responsible for Taxes attributable to improvements installed by Owner or others on the Owner's Property. Owner shall submit the annual statement for Taxes to Operator within a reasonable time after the date Owner receives the statement from the taxing authority. Operator may elect to have the statement for Taxes sent directly to Operator. In such event, Operator shall pay all Operator's Taxes to the appropriate taxing authority prior to delinquency, and Owner shall pay to Operator Owner's Taxes prior to delinquency (or Operator may pay Owner's Taxes and offset such amount against the Payments). If Operator receives such statement directly, Operator shall

submit a copy of the statement for Taxes to Owner within thirty (30) days after the date Operator receives the statement from the taxing authority.

12.3 **Failure to Pay.** In the event either Party fails to pay their share of Taxes prior to delinquency, the other Party shall have the right to pay such Taxes and any accrued penalties or interest, which payments shall increase or be offset against other Payments due under this Agreement.

12.4 **Operator's Right to Contest.** Operator may contest the legal validity or amount of any Operator's Taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary, provided that Operator shall bear all expenses in pursuing such contest or proceeding. With respect to any Taxes which may constitute a lien on the Owner's Property, Operator shall promptly pay such Taxes unless the proceeding in which it contests such Taxes shall operate to prevent or stay the collection of the Taxes so contested or unless Operator removes any such lien by bonding or otherwise. Owner agrees to render to Operator all reasonable assistance in contesting the validity or amount of any such Taxes, with the exception of Taxes levied by Owner, including joining in the signing of any reasonable protests or pleading which Operator may deem advisable to file; provided, however, that Operator shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with providing such assistance.

13. **Mortgage of Operator Property.**

13.1 **Right to Mortgage.** Operator may, upon written notice to Owner, but without requiring Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its interest in this Agreement and the Operator Property. These various security interests in all or a part of this Agreement and the Operator Property are collectively referred to as an "**Operator Mortgage**" and holder of such security interest, an "**Operator Mortgagee**". Any Operator Mortgagee shall use the Operator Property only for the uses permitted under this Agreement. Whenever Operator has granted a security interest under this Section 13, it will give Owner notice of the Operator Mortgage (including the name and address of the Operator Mortgagee for notice purposes) to Owner within thirty (30) days; provided that failure to give this notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner to provide such Operator Mortgage notice until the Operator and its address is given to Owner.

13.2 **Notice of Default and Opportunity to Cure.** As a precondition to exercising any rights or remedies related to any alleged default by Operator under this Agreement, Owner shall give written notice of the default to each Operator Mortgagee at the same time it delivers notice of default to Operator, specifying in detail the alleged event of default and the required remedy. Each Operator Mortgagee or its designee shall have the right, but not the obligation, to cure any default as Operator, and/or the right, but not the obligation, to remove any Improvements or other property owned by Operator or such Operator Mortgagee located on the Owner's Property to the same extent as Operator. The cure period for any Operator Mortgagee shall be the later of (i) the end of the Operator cure period under Section 18; (ii) thirty (30) days after such Operator Mortgagee's receipt of the default notice; or (iii) if applicable, the extended cure period provided for in Section 13.3. Failure by Owner to give an Operator Mortgagee

notice of default shall not diminish Owner's rights against Operator, but shall preserve all rights of the Operator Mortgagee or its designee to cure any default and to remove any Improvements or other property of Operator or the Operator Mortgagee located on the Owner's Property.

13.3 **Extended Cure Period.** If any default by Operator under this Agreement cannot be cured without the Operator Mortgagee obtaining possession of all or part of the Operator Property, then any such default shall be deemed remedied if an Operator Mortgagee: (i) within sixty (60) days after receiving notice from Owner as set forth in Section 13.2, acquires possession of all or part of the Operator Property, or begins appropriate judicial or nonjudicial proceedings to obtain the same; (ii) diligently prosecutes any such proceedings to completion; and (iii) after gaining possession of all or part of the Operator Property performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If an Operator Mortgagee is prohibited by any court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the sixty (60) day period specified above for commencing proceedings shall be extended for the period of such prohibition.

13.4 **Operator Mortgagee Liability.** Any Operator Mortgagee whose interest in the Operator Property is held solely for security purposes, shall have no obligation or liability under this Agreement unless and until the Operator Mortgagee succeeds to absolute title to the Operator Property and the rights of Operator under this Agreement. An Operator Mortgagee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title.

13.5 **Certificates.** Owner shall execute any estoppel certificates (certifying as to truthful matters, including without limitation that no default then exists under this Agreement, if such be the case), consents to assignment and non-disturbance agreements as Operator or any Mortgagee may reasonably request from time to time. The Parties shall negotiate in good faith any amendment to this Agreement from time to time to include any provision that may be reasonably requested by Operator or any Operator Mortgagee to implement the provisions contained in this Agreement or to preserve an Operator Mortgagee's security interest.

13.6 **Operator Mortgagee's Right to Enforce Mortgage and Assign.** Each Operator Mortgagee shall have the right, in its sole discretion: (i) to assign its Operator Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Operator Property by any lawful means; (iii) to take possession of and operate all or any portion of the Operator Property and to perform all obligations to be performed by Operator under this Agreement, or to cause a receiver to be appointed to do so; and (iv) to acquire all or any portion of the Operator Property by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer all or any portion of the Operator rights under this Agreement to a third party in accordance with Section 14. Any Operator Mortgagee or other party who acquires Operator's interest in all or a portion of the Operator Property pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Operator by this Agreement, which are incurred or accruing after such Operator Mortgagee or other party no longer has ownership or possession of the Operator Property.

13.7 **New Agreement.**

13.7.1 If the Operator Property is foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights and, within ninety (90) days after such event, Operator or any Operator Mortgagee or other purchaser at a foreclosure sale shall have arranged to the reasonable satisfaction of Owner to cure any material defaults under this Agreement, and for the payment of all Annual Installment Payments or other charges due and payable by Operator as of the date of such event, then Owner shall execute and deliver to Operator or such Operator Mortgagee or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Operator or any Operator Mortgagee or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); and (iii) shall include that portion of the Operator Property in which Operator or such other Operator Mortgagee or other purchaser at a foreclosure sale had an interest on the date of rejection or termination.

13.7.2 If more than one Operator Mortgagee makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Operator Mortgagee requesting such New Agreement whose Operator Mortgage is prior in time, and the written request of any other Operator Mortgagee whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section 13 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Owner, Operator and each Operator Mortgagee, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the date of execution and delivery of such New Agreement, such Operator Mortgagee or other purchaser at a foreclosure sale may use and enjoy the Operator Property without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with.

13.8 **Operator Mortgagee's Consent to Amendment, Termination or Surrender.** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as any Operator Mortgage remains outstanding, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Operator Property from Operator, prior to expiration of the Term of this Agreement, without the prior written consent of the Operator Mortgagee holding such Operator Mortgage. This provision is for the express benefit of and shall be enforceable by each Operator Mortgagee as if it were a party named in this Agreement.

14. **Assignment and Sublease.** Operator shall have the right, without Owner's consent, to sell, convey, lease, or assign all or any portion of this Agreement or the Operator Property, on either an exclusive or a non-exclusive basis, or to grant subleases, co-leases, leases, licenses or similar rights with respect to the Operator Property (collectively, "**Assignment**"), to one or more persons or entities (collectively "**Assignee**"). Each Assignee shall use the Operator Property only for the uses permitted under this Agreement. When Operator makes any Assignment under this Section 14, Operator shall give written notice to Owner of such

Assignment (including the interest conveyed by the Assignment and address of the Assignee for notice purposes) to Owner; provided Operator's failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such assignment or conveyance until such notice is given. Any Assignment by Operator shall release Operator from obligations subject thereof accruing after the date that liability for such obligations is assumed by the Assignee provided that Assignee is financially capable of satisfying any obligations of this Agreement.

15. **Hazardous Materials.**

15.1 **Owner's Covenants Regarding Hazardous Materials.** Owner represents and warrants that, to the best of Owner's knowledge, the Owner's Property is not and has not been in violation of any federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement ("**Environmental Laws**"), and Owner has not received any notice or other communication from any governmental authorities alleging that the Owner's Property is in violation of any Environmental Laws. "**Hazardous Materials**" shall mean any asbestos containing materials, petroleum, explosives, toxic materials, or substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any federal, state, or local law or regulation. Owner warrants that Owner has done nothing to contaminate the Operator Property with Hazardous Materials or wastes.

15.2 **Operator's Covenants Regarding Hazardous Materials.** Operator shall, at Operator's sole cost and expense, promptly take removal or remedial action required by Environmental Law with regard to any material violation of any Environmental Law with regard to any Hazardous Materials brought onto the Owner's Property by Operator or its employees, agents, or contractors. Owner shall cooperate with Operator with regard to any scheduling or access to the Owner's Property in connection with any action required hereunder.

15.3 **Operator's Indemnity Regarding Hazardous Materials.** Operator shall indemnify, defend, protect and hold Owner harmless from any liability based on: (i) the release of Hazardous Materials in, on, under or about the Owner's Property caused by Operator or its employees, agents, or contractors, or (ii) the violation by Operator or its employees, agents, or contractors of any Environmental Law. The indemnity obligations set forth herein shall survive termination of this Agreement.

16. **Insurance and Indemnity.**

16.1 **Insurance.** At all times during which Operator is conducting any activities on the Property and at all times during the Term of this Agreement, Operator shall maintain in effect (1) commercial General Liability Insurance, including bodily injury and property damage coverage with minimum limits of \$1 Million Dollars per occurrence and \$2 Million Dollars aggregate and (2) Umbrella Liability Insurance with minimum limits of \$5 Million Dollars per occurrence and \$5 Million Dollars aggregate. Upon a written request by Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of such insurance. The naming of Owner as an additional insured shall not constitute a waiver of defenses available to the Owner under Section 670 of the Code of Iowa.

16.2 **Indemnity by Operator.** Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, costs, expenses, obligations, losses, damages, claims, (collectively "**Claims**") resulting from the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Owner, its agents, contractors or employees, invitees, licensees or permittees.

16.3 **Indemnity by Owner.** Owner shall, only to the extent permitted by the Iowa Constitution and the laws of the State of Iowa, defend, indemnify, protect, and hold Operator harmless from and against all Claims resulting from the negligence, willful misconduct, or breach of this Agreement by Owner, its agents, contractors or employees, invitees, licensees and permittees; provided, however, that such Claims are not due to the sole negligence, willful misconduct, or breach by Operator, its agents, contractors, employees, invitees, licensees, or permittees.

16.4 **Survival.** The obligations of the Parties under this Section 16 shall survive expiration or other termination of this Agreement.

17. **Confidentiality.** To the extent permitted by law, Owner agrees not to provide copies of the Agreement or disclose the terms of the Agreement to any unauthorized person or entity. Operator authorizes Owner to provide copies of the Agreement and disclose the terms thereof to Owner's attorney, accountant, financial advisor and any existing or prospective mortgagee, lessee, or purchaser for the sole purpose of evaluating and advising Owner and for no other purpose, so long as such authorized parties agree not to provide copies of the Agreement or disclose the terms thereof to any unauthorized person or entity. Any Owner and party shall return all material containing any confidential information to Operator immediately upon its request. To the extent permitted by law, no party shall publish, file for public record, reproduce, or otherwise disseminate this document or any of the terms and provisions hereof to any party, other than the Parties set forth above without the prior written consent of Operator, which consent may be withheld for any reason and in Operator's sole discretion. Operator understands that Owner is a public entity subject to open records laws and must release records requested in the context of those laws. Operator further understands that Owner must publish the Agreement in order to be able to enter in to it.

18. **Default and Remedies.**

18.1 **Operator Payment Default.** If Operator shall fail to pay any amounts set forth in **Exhibit D** which failure continues for more than thirty (30) days from receipt of written notice from Owner that such amount is due, then Operator shall be in default ("**Operator Payment Default**") and Owner shall have the following remedies:

18.1.1 **Collection of Payments.** With or without terminating this Agreement, Owner may file a lawsuit against Operator to collect any unpaid amounts set forth in **Exhibit D** together with interest thereon that accrues during the continuance of the Operator Payment Default, calculated at a rate ("**Default Rate**"), which is the lesser of (i) the prime interest rate at

JP Morgan Chase & Co. (or its successor) plus two percent (2%) per annum, or (ii) the maximum lawful rate.

18.1.2 **Terminate Agreement.** Owner may not terminate this Agreement because of any Operator Payment Default without first giving Operator written notice of its intention to terminate the Agreement ("**Termination Notice**"), to be effective on a date to be specified by Owner that is at least thirty (30) days after the date of the Termination Notice. If, by the date specified in the Termination Notice, Operator fails to pay the amount required to cure the Operator Payment Default (including interest at the Default Rate that accrues during the continuance of the Operator Payment Default), Owner's termination of this Agreement shall become effective on the date specified in the Termination Notice. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Operator with respect to the Operator Payment Default and interest payable with respect thereto); (ii) the removal of the Improvements by Operator pursuant to Section 8.11; and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section 18.1.2 is subject to and conditioned upon Owner giving any Operator Mortgagee written notice and opportunity to cure the Operator Payment Default as provided in Section 13.2.

18.2 **Other Operator Default.** Operator shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement other than an Operator Payment Default as set forth in Section 18.1 and shall not cure such default within thirty (30) days after receiving notice thereof from Owner (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Operator fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Other Operator Default**"). The breach by Operator of any provision hereof may only result in a cause of action by Owner under applicable law and, other than as set forth in this Section 18.2, Owner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term. In the event of any such breach by Operator, Owner shall, at least thirty (30) days prior to commencing any cause of action, give written notice of the cause of breach to Operator, and any Operator Mortgagee (of which it has been notified in writing) concurrently, specifying in detail the alleged event of breach and the required remedy. If Operator does not cure or commence curing such breach within thirty (30) days of receipt of notice, the Operator Mortgagee or its designee shall have the absolute right, but not the obligation, to substitute itself for Operator and perform the duties of Operator hereunder for the purposes of curing such breach. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Operator Mortgagee or its designee (or its employees, agents, representatives or contractors) to enter upon the Owner's Property to complete such performance with all the rights, privileges and obligations of Operator hereunder. Owner may cure any default by Operator after Operator's cure period has expired. If Owner at any time by reason of Operator's default, pays any sum or performs any act that requires the payment of any sum, the sum paid by Owner shall be due immediately from Operator to Owner, together with interest on such sum calculated at the Default Rate.

18.3 **Owner Default.** Owner shall be in default of this Agreement if it shall fail to meet any of its obligations under the terms of this Agreement and shall not cure such default within thirty (30) days after receiving notice thereof from Operator (or if such default cannot be cured through the exercise of reasonable diligence within such thirty (30) day period, if Owner fails to commence corrective action within such thirty (30) day period and thereafter diligently prosecutes same to completion) ("**Owner Default**"). Upon the occurrence of an Owner Default, Operator shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement without being liable for prosecution or any claim of damages therefor; and (ii) pursue any and all other action or remedies that may be available to Operator at law or in equity, including but not limited to all loss or damage which Operator may suffer by reason of a termination of this Agreement.

19. **Condemnation.**

19.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Operator's Property, or all of the Improvements thereon, for any public use or otherwise, then the interests and obligations of Operator under this Agreement in or affecting the Operator's Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of the Operator's Property or the Improvements thereon, (ii) the date that Operator is, in its sole judgment, no longer able or permitted to operate the Project on the Operator's Property in a commercially viable manner, or (iii) the date of the condemnation judgment. Operator shall continue to pay all amounts payable hereunder to Owner until the earlier of such dates, at which time the Parties shall be relieved of any and all further obligations and conditions to each other under this Agreement.

19.2 **Partial Taking.** If, at any time during the term of this Agreement, any authority having the power of eminent domain shall condemn one or more, but not all, of the Solar Panels, or any portion of the Improvements or the Operator's Property, then the interest and obligations of Operator under this Agreement as to those Solar Panels or any portion of the Improvements or the Operator's Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes possession of such Solar Panels or any portion of the Improvements or the Operator's Property, (ii) the date that Operator is, in its reasonable judgment, no longer able or permitted to operate the Project on the Operator's Property, or any portion thereof, in a commercially viable manner, or (iii) the date of the condemnation judgment; and, unless this Agreement is terminated as hereinafter provided, this Agreement shall continue in full force and effect as to the remainder of the Solar Panels, Improvements and the Operator's Property. If the remainder of the Solar Panels or any other portion of the Improvements or the Operator's Property is or becomes insufficient or unsuitable for Operator's purposes hereunder, as determined by Operator in its sole discretion, then, subject to the rights of any Operator Mortgagee under Section 13, Operator shall have the right to terminate this Agreement as to the portion of the Operator's Property to which Operator continues to hold the rights, at which time the Parties shall be relieved of any further obligations and duties to each other under this Agreement.

19.3 **Apportionment, Distribution of Award.** On any taking, all sums awarded, including damages and interest, shall be paid as follows:

(a) Any portion of the award by the court on account of any cost or loss that Operator may sustain in the removal and relocation of Operator's Improvements, to Operator;

(b) Any portion of the award by the court for Operator's anticipated or lost revenues or profits, to Operator;

(c) Any portion of the award by the court for Owner's lost revenues, to Owner;

(d) All remaining amounts of the award, to Owner or Operator consistent with applicable Iowa law.

20. **Notice.**

20.1 **Writing.** All notices given or permitted to be given hereunder shall be in writing.

20.2 **Delivery.** Notice is considered given either (i) when delivered in person to the recipient named below, (ii) upon receipt after deposit in the United States mail in a sealed envelope or container, postage and postal charges prepaid, return receipt requested or certified mail, addressed by name and address to the party or person intended, or (iii) twenty-four (24) hours from proper and timely delivery to an overnight courier service addressed by name and address to the party or person intended as follows:

Notice to Owner: Linn County, Iowa
10260 Morris Hill Road
Toddville, IA 52341
Telephone: (319) 892-6450
Email: _____

Notice to Operator: Boulevard Associates, LLC
700 Universe Blvd
Juno Beach, FL 33408
Attn: Land Services Administration
Telephone: (855) 552-9872

20.3 **Change of Recipient or Address.** Either Party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt or notice of change shall not be invalidated by the change.

21. **Miscellaneous Provisions.**

21.1 **Successors and Assigns.** The terms and provisions of this Agreement shall run with the land and be binding on and inure to the benefit of the heirs, successors, assigns and personal representatives of the Parties. In accordance with this Agreement, Operator in its

discretion may authorize other persons or entities to use the Operator Property for the purposes stated in this Agreement.

21.2 **Memorandum.** Simultaneously with the execution of this Agreement, the Parties agree to execute and acknowledge a memorandum of this Agreement. Operator may record the executed memorandum in the public records of Linn County, Iowa.

21.3 **Entire Agreement.** This Agreement and the attached Exhibits shall constitute the entire agreement between the Parties and supersedes all other prior writings and understandings.

21.4 **Amendments.** This Agreement shall not be amended or modified in any way except by an instrument signed by the Parties and consented to by any Operator Mortgagee. The Parties hereto shall at all times hereafter execute any documents and do any further acts which may be necessary or desirable to carry out the purposes of this Agreement and to give full force and effect to each and all of the provisions hereof.

21.5 **Legal Matters.** This Agreement shall be governed by and interpreted in accordance with the then existing laws of the State of Iowa and the County where the Owner's Property is located shall be considered the proper forum or jurisdiction for any disputes arising in connection with this Agreement. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity and as provided by this Agreement. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.**

21.6 **Severability.** If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

21.7 **Tax Credits.** If under applicable law Operator becomes ineligible for any currently existing tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Operator's option, the Parties shall negotiate in good faith to amend this Agreement or replace it with a different instrument so as to convert Operator's interest in the Operator Property to a substantially similar interest that makes Operator eligible for such tax credit, benefit or incentive. Such amendment or instrument shall not impair any of Owner's rights or increase the burdens or obligations of Owner under this Agreement.

21.8 **Approvals.** Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified, such approval or consent shall not be unreasonably withheld or delayed.

21.9 **Authority.** The signatories hereto warrant that each has the authority to execute this Agreement on behalf of any entities which are Parties to this Agreement and that each such

entity has executed this Agreement pursuant to its organizational documents or a resolution or consent of their Board of Directors or other governing body.

21.10 **Time of Essence**. Time is of the essence of each provision of this Agreement.

21.11 **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

[Signatures on Next Page]

Owner:

Linn County, Iowa

By:

John Hanson President of
Linn County Conservation Board

By:

Stacey Walker, Chair of
Linn County Board of Supervisors

Operator:

Boulevard Associates, LLC
a Delaware limited liability company

By:

Kevin Gildea, Authorized Representative

EXHIBIT A

Legal Description of Owner's Property

Parcel 1, Parcel 3, Parcel 7 and Parcel 8

Southeast Quarter (SE $\frac{1}{4}$) of Section 7, Township 84, Range 8, Linn County, Iowa, except the North 500 feet of the South $\frac{1}{2}$ of said SE $\frac{1}{4}$.

Approximately 134 acres

Parcels 2 and Parcel 4

East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 18, Township 84, Range 8, Linn County, Iowa.

Approximately 80 acres

Parcel 5 and Parcel 6

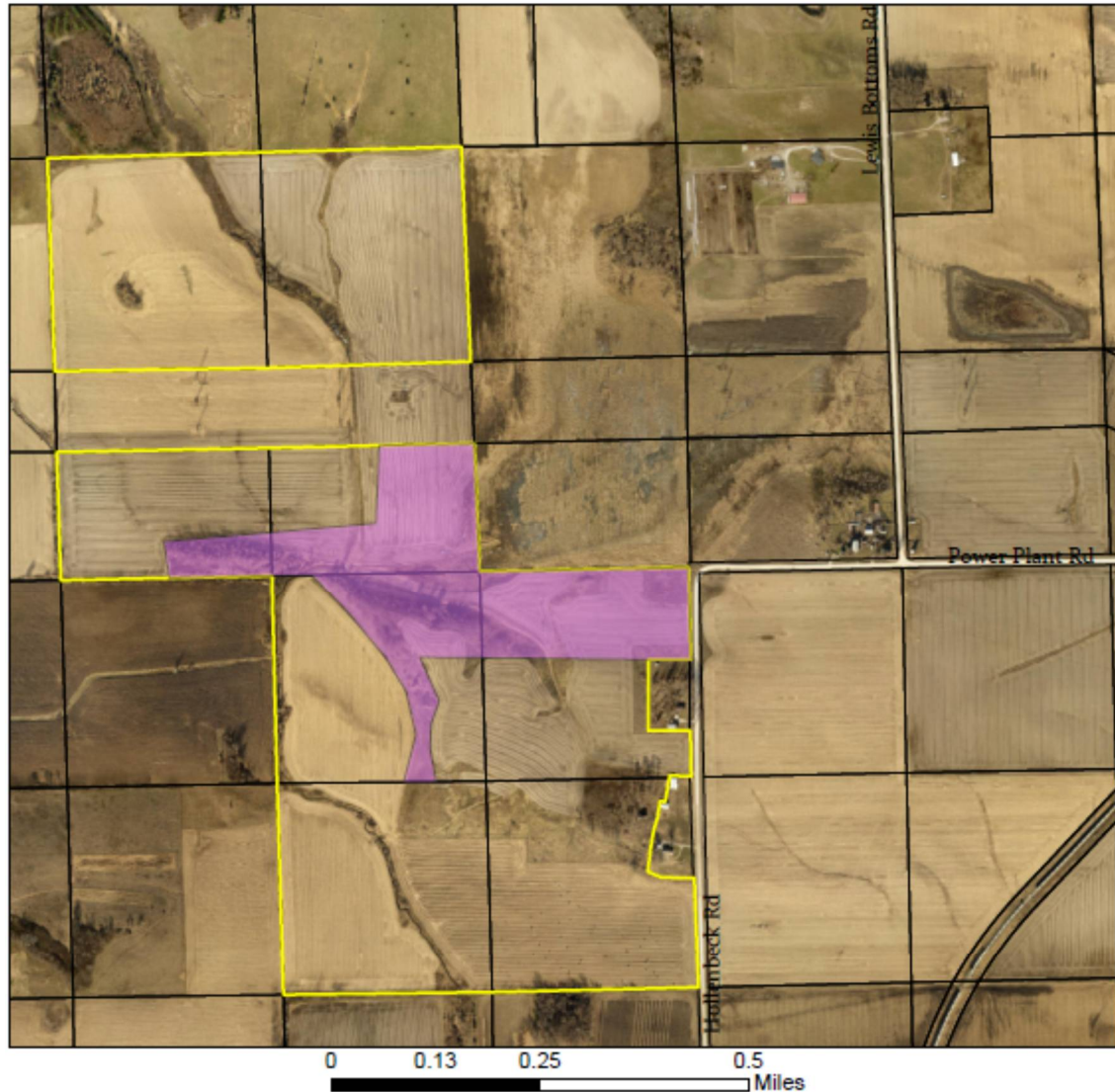
West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 17, Township 84, Range 8, Linn County, Iowa excepting therefrom Railsback First Addition to Linn County, Iowa and further excepting Golden Grain First Addition to Linn County, Iowa, subject to the public highway.

Approximately 72 acres

EXHIBIT B-1

Depiction of Exclusion Area

Linn County Learning Farm
Solar Exclusion Zone



Legend

-  Exclusion
-  Parcel Boundary
-  Natural Area Boundary



Fayette township, Linn county T84N R8W S7, 17, and 18

HOLDING PAGE FOR EXHIBIT B-2

Preliminary Lease and Easement Improvement Plan and Acreage Calculation
To be Delivered with Option Notice

HOLDING PAGE FOR EXHIBIT C

As Built Lease and Easement Improvements and Final Acreage Calculation

EXHIBIT D

Lease and Easement Compensation

(1) **Signing Bonus** Operator shall pay to Owner a one-time signing bonus of \$10,000.00 ("**Signing Bonus**") if Owner signs this Agreement on or before the date which is fifteen (15) days from the date in which the original draft of this Agreement is tendered to Owner or Owner's representative or attorney. The Signing Bonus will be made within sixty (60) days after the Effective Date.

(2) **Option Payment.** As consideration for the granting of the Option, Operator agrees to pay Owner the annual amount of \$2,000.00 ("**Option Payment**"). The first Option Payment shall be made within sixty (60) days after the Effective Date and thereafter, the Option Payment shall be made on or before each anniversary of the Effective Date during the Option Term unless Operator elects to terminate the Option. If Operator shall fail to timely make the initial payment or any subsequent payment throughout the Option Term, Owner shall provide written notice to Operator of Operator's failure and Operator shall have the opportunity to cure such failure in the manner prescribed in Section 18.

(3) **Payment for Lease and Easements.**

(3)(a) During the Initial Lease and Easement Term, Operator shall pay annually to Owner the greater of the following amounts: (i) \$177,000; or (ii) \$900.00 per utilized acre, which acreage shall initially be determined by the calculation stated in **Exhibit B-2** and finally determined by the calculation stated in **Exhibit C** for the Lease and Easements. The payment stated in this subparagraph shall be collectively and individually referred to as the "**Annual Installment Payments**". The Annual Installment Payments shall increase two percent (2%) every year of the Lease and Easement Term.

(3)(b) Annual Installment Payments for partial years shall be prorated based on the number of days in the partial year included in the Term. If a part of the Improvements remains after the end of the Term, Operator shall continue to make Annual Installment Payments at the rate paid for the last year of the Term until Operator's Removal Obligations are fulfilled ("**Removal Date**"). However, such payments shall not excuse Operator from its Removal Obligations, nor extend the time for Operator to comply with such Removal Obligations.

(3)(c) Payments for the first partial year of the Term shall be made within sixty (60) days after the Commencement Date. All subsequent Annual Installment Payments shall be due in advance on or before February 28th of the calendar year or partial calendar year to which they are attributable during the Term. For example purposes only, Annual Installment Payments for the 2027 calendar year would be due on or before February 28, 2027. After Operator delivers **Exhibit C** to Owner, any necessary payment adjustments shall be paid within thirty (30) days by Operator or credited against the next payment due from Operator to Owner.

(4) **Attorney's Fees.** Operator shall pay to Owner \$750.00 to reimburse Owner for reasonable fees it expends in hiring an attorney to review the Agreement. Payment will be made within sixty (60) day after the Effective Date.

(5) **Payment Allocation Schedule.** All payments to Owner shall be made based on the following allocation: 100% to Linn County Iowa Treasurer

Prepared by and when recorded return to:
Orin Shakerdge
NextEra Energy Resources, LLC
700 Universe Blvd.
Juno Beach, FL 33408
(561) 694-4678

THIS SPACE FOR RECORDER'S USE ONLY

MEMORANDUM OF SOLAR LEASE AND EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR LEASE AND EASEMENT AGREEMENT ("**Memorandum**"), is dated this _____ day of _____, 2021 ("**Effective Date**"), by and between Linn County, Iowa, whose address for notices is: 10260 Morris Hill Road, Toddville, IA 52341 ("**Owner**") and Boulevard Associates, LLC, a Delaware limited liability company, whose address for notices is: 700 Universe Blvd., Juno Beach, FL 33408, Attn: Land Services Administration ("**Operator**"). Each of Owner and Operator shall hereinafter be referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, the Parties entered into a Solar Lease and Easement Agreement dated as of the Effective Date ("**Agreement**"), by which Owner granted to Operator an exclusive option ("**Option**") for a Lease and Easements over and across certain real property located in Linn County, Iowa, described on the attached **Exhibit A** as the "**Owner's Property**".

WHEREAS, the Parties desire to execute, deliver and record this Memorandum for the purpose of putting all persons on notice of Operator's right, title and interest in Owner's Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby state, declare and establish as follows:

1. **Defined Terms.** All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Agreement and the terms, covenants and conditions of the Agreement are incorporated herein by reference with the same force and effect as though fully set forth herein.

2. **Option.** The period during which Operator may exercise the Option shall be for a term of five (5) years, commencing on the Effective Date ("**Option Term**"). Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the commencement date ("**Commencement Date**"). On the Commencement Date, the Lease and Easements in the

Agreement shall automatically become effective, and the Parties shall be subject to all of the terms and conditions of the Agreement with respect to such Lease Rights, Easements and all rights and obligations relating thereto.

3. **Lease Rights.** The Agreement between the Parties leases the Owner Property to Operator to construct, operate and maintain the Improvements for a solar-powered electrical power generation and transmission project ("**Project**") and leases other rights including but not limited to, ingress and egress over Owner's Property to and from the Improvements, installing energy storage facilities, and for the purpose of surveying, testing and installing monitoring devices on Owner's Property, all in accordance with and subject to the terms of the Agreement.

4. **Term.** The initial term of the Lease and Easements shall end thirty (30) years after the Commencement Date. Operator has the right to extend the Term of the Agreement for an additional term of ten (10) years.

5. **Sun Non-Obstruction Easement.** The Agreement between the Parties grants to Operator an irrevocable, exclusive easement for the right and privilege to use, maintain and 'capture the free and unobstructed sunlight over and across the Owner's Property. Owner shall not engage in any activity on Owner's Property or any other neighboring property owned by Owner that might interfere with the sunlight direction over any portion of Owner's Property; cause a decrease in the output or efficiency of any Solar Panel or Weather Instrument; or otherwise interfere with Operator's operation of the Project or exercise of any rights granted in this Agreement.

6. **Effects Easement.** The Agreement between the Parties grants to Operator a non-exclusive easement over Owner's Property for audio, visual, view, light, flicker, noise, shadow, vibration, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Project located on the Owner's Property.

7. **Exclusive Rights.** The Agreement between the Parties provides Operator shall have the exclusive right (i) to use and possess the Owner Property in connection with the Project and other similar sun-powered electrical power generation projects; (ii) to use and convert all of the sunlight resources on the Owner's Property; and (iii) to undertake such other activities on the Owner's Property that may be related to the Project, including, without limitation, the storage of Solar Panels, materials and equipment during the installation and construction of the Improvements; development and operation of communications systems; and site tours of the Project for visitors and other interested parties.

8. **Memorandum Interpretation.** This Memorandum is not a complete summary of the Agreement and the statements contained in this Memorandum shall not be used in interpreting the actual provisions of the Agreement. In the event of conflict between this Memorandum and the Agreement, the terms and provisions of the Agreement shall control.

[Signatures on Next Pages]

EXHIBIT A

Legal Description of Owner's Property

Parcel 1, Parcel 3, Parcel 7 and Parcel 8

Southeast Quarter (SE $\frac{1}{4}$) of Section 7, Township 84, Range 8, Linn County, Iowa, except the North 500 feet of the South $\frac{1}{2}$ of said SE $\frac{1}{4}$.

Approximately 134 acres

Parcels 2 and Parcel 4

East Half of the Northeast Quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$) of Section 18, Township 84, Range 8, Linn County, Iowa.

Approximately 80 acres

Parcel 5 and Parcel 6

West Half of the Northwest Quarter (W $\frac{1}{2}$ NW $\frac{1}{4}$) of Section 17, Township 84, Range 8, Linn County, Iowa excepting therefrom Railsback First Addition to Linn County, Iowa and further excepting Golden Grain First Addition to Linn County, Iowa, subject to the public highway.

Approximately 72 acres

RESOLUTION NO. 2020 - 3 -

SETTING A PUBLIC HEARING TO CONSIDER A SOLAR LEASE AND EASEMENT AGREEMENT

WHEREAS, the Linn County Board of Supervisors wishes to consider a proposed Solar Lease and Easement Agreement by and between Linn County, Iowa and Boulevard Associates, LLC for a solar-powered electrical generation and transmission project, known as the Rising Sun Energy Center, on Linn County-owned real property located in Fayette Township, near the intersection of Power Plant Road and Hollenbeck Road, north of Palo, Iowa; and,

WHEREAS, said proposed Agreement provides for an initial lease and easement term of 30 years after the commencement date; and,

WHEREAS, Iowa Code Section 331.361 relating to county property requires the Board of Supervisors to hold a public hearing on a proposal to lease county-owned real property for a term of more than three years prior to making a final determination on the proposal.

BE IT THEREFORE RESOLVED by the Linn County Board of Supervisors that the public hearing on the proposal to approve a Solar Lease and Easement Agreement by and between Linn County, Iowa and Boulevard Associates, LLC for a solar-powered electrical generation and transmission project known as the Rising Sun Energy shall be held on the 29th day of March 2020 at 11 o'clock a.m. in the Formal Board Room, Linn County Public Service Center, 935 – 2nd Street SW, Cedar Rapids, Iowa 52404 at which time public comment will be received, after which the Board of Supervisors may make a final determination on the proposal.

BE IT FURTHER RESOLVED that notice of said public hearing shall be published in accordance with Iowa Code Section 331.305.

PASSED AND APPROVED this day of March, 2021.

LINN COUNTY BOARD OF SUPERVISORS

Stacey Walker, Chair

Ben Rogers, Vice Chair

Louis J. Zumbach, Supervisor

Aye: _____ Nay: _____ Abstain: _____

ATTEST:

Joel Miller, Linn County Auditor

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fourteenth day of September in the year Two Thousand Twenty
(In words, indicate day, month and year.)

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

Linn County Board of Supervisors
935 2nd Street SW
Cedar Rapids, IA 52404

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

Martin Gardner Architecture, P.C.
700 11th Street
Suite 200
Marion, IA 52302
Telephone Number: 319-377-7604
Fax Number: 319-377-1175

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

Linn County Derecho Evaluation and Assessment
Various locations throughout Linn County, Iowa.
Linn County Evaluation and Assessment of Damage from the Derecho August 10, 2020.

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

Phase 1: Property Assessment and Report of approximately 30 properties owned by Linn County. The Architect will document observed damages and if it is determined the property also needs assessment of structural, mechanical, electrical, or plumbing components then the Architect will engage the appropriate engineer. Each property walk includes identification and assessment of exterior conditions of the buildings and property. If the exterior damage is significant an interior assessment of the building will also be conducted to determine the extent of the damage. At the conclusion of this phase of work the Architect will provide to the Owner a comprehensive report of the damages observed and opinions of probable construction costs for each property. Each report will include required FEMA paperwork.

Phase 2: Construction Documents, Bidding, and Construction Administration of the properties identified from the Phase 1 report.

Refer to attached Exhibit B – Supplemental Services Table 4.1.1 dated September 14, 2020 for additional information regarding services that are and are not included in the Owner's program for the Project at this time.

§ 1.1.2 The Project's physical characteristics:

Init.

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

Assessment of approximately 30 properties owned by Linn County.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

To be determined at the conclusion of Phase 1 services.

The Project's Scope and Architect's Fees are based on the Initial Information shown in this Agreement and no less than the Owner's budget for the Cost of the Work. Refer to Article 3.3.2 and 3.4.4 for changes to the Cost of the Work.

§ 1.1.4 The Owner's anticipated design and construction milestone dates. Milestone schedules will be maintained by the Architect during the course of the Project. The Architect will share with the Owner the initial Milestone schedule, and any subsequent changes to that schedule:

.1 Design phase milestone dates, if any:

Schematic Design Completion: To be determined on a per Project basis.

Construction Documents Completion: To be determined on a per Project basis.

.2 Construction commencement date:

To be determined on a per Project basis.

.3 Substantial Completion date or dates:

To be determined on a per Project basis.

.4 Other milestone dates:

Final Completion and Owner Acceptance: Thirty (30 days after the date of Substantial Completion.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Quotes for projects less than \$135,000.00 and Public Bidding for projects greater than \$135,000.00 as defined by the State of Iowa law.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable.
(Paragraph Deleted)

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

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Darrin Gage, Director of Policy and Administration
935 2nd Street SW
Cedar Rapids, IA 52404
Telephone Number: 319-892-5101
Email Address: Darrin.gage@linncounty.org

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Linn County Board of Supervisors

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer: To be determined on a per Project basis.
- .2 Civil Engineer: To be determined on a per Project basis.
- .3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

Asbestos Testing and Abatement Contractor
Lead Based Paid Testing and Abatement Contractor
Moisture Mitigation Contractor

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

Kyle Martin, AIA, LEED AP, President
Sarah Coleman, AIA, Project Manager
Martin Gardner Architecture, P.C.
700 11th Street
Suite 200
Marion, IA 52302
Telephone Number: 319-200-8486
Fax Number: 319-377-1175
Email Address: sarahc@martingardnerarch.com

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

§ 1.1.11.1 Consultants retained under Basic Services: (The Architect reserves the right to change Consultants, and will notify the Owner if such a change is required.

- .1 Structural Engineer (To be determined from the below selections as their workload permits):

M2B Structural Engineers
422 2nd Avenue SE
Suite B
Cedar Rapids, IA 52401
Telephone Number: 319-364-0666

Select Structural Engineering, LLC
606 14th Avenue SW
Cedar Rapids, IA 52404
Telephone Number: 319-365-1150

Init.

.2 Mechanical Engineer:

West Plains Engineering
215 2nd Avenue SE
Suite 200
Cedar Rapids, IA 52401
Telephone Number: 319-365-0030

.3 Electrical Engineer:

West Plains Engineering
215 2nd Avenue SE
Suite 200
Cedar Rapids, IA 52401
Telephone Number: 319-365-0030

§ 1.1.11.2 Consultants retained under Supplemental Services:

None known at this time.

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

The Owner has completed property reviews their Insurance Company and Adjusters, Adjusters International/Tidal Basin. The Architect to complete assessments and reports of approximately 30 properties as identified by the Owner to receive funding to facilitate necessary repairs from FEMA.

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. See attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

Init.

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

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

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

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) each accident, Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) each employee, and Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate.

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

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

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

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

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

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

§ 3.2 Schematic Design Phase Services

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

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

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

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

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

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

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

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§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Any changes requested by the Owner to the Schematic Design Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Design Development Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Schematic Design Phase Services.

§ 3.3 Design Development Phase Services

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Any changes requested by the Owner to the Schematic Design or Design Development Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Construction Documents Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Design Development Phase and subsequent phases of Services.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3. If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work

exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

§ 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. Any changes requested by the Owner to the Schematic Design, Design Development, or Construction Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Procurement Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Construction Documents Phase and subsequent phases of Services.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

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

§ 3.5.2 Competitive Bidding

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

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

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

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders. Additional Services will be charged at the hourly rates shown in Article 11.7 when substitutions require extensive research greater than two (2) hours of the Architect or Architect's Consultant time, per substitution.

§ 3.5.3 Negotiated Proposals

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

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

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

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors. Additional Services will be charged at the hourly rates shown in Article 11.7 when substitutions require extensive research greater than two (2) hours of the Architect or Architect's Consultant time, per substitution.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner

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and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

§ 3.6.2 Evaluations of the Work

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

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

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

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

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

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an

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evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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

§ 3.6.4 Submittals

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

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

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

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

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

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

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

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

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

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

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES - Omit the following table in Article 4.1.1 and replace with attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

§ 4.1 Supplemental Services

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

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

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

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

§ 4.1.2 Description of Supplemental Services

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

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

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

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

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

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

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

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation 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 entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved 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 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 The Architect shall provide site visits during construction of the Project as appropriate to the nature of the Project. Visits to the site by the Architect during construction are to be determined on a per Project basis. When this number is reached, the Architect shall notify the Owner. The Architect shall conduct site visits in excess of that number as an Additional Service; additional site visits will be charged for a flat rate of \$500.00 per visit
- .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; additional meetings will be charged for a flat rate of \$500.00 per visit
- .4 One (1) inspections for any portion of the Work to determine final completion; additional meetings will be charged for a flat rate of \$500.00 per visit.

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§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Services past 60 days will be billed as an Additional Service using the Hourly Rates as shown in Article 11.7.

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-four (24) 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.

§ 4.2.6 Any services provided by the Architect more than Thirty (30) days after the date listed on the Certificate of Substantial Completion, not due to the fault of the Architect, shall be billed as an Additional Service using the hourly rates shown in Article 11.7.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. See attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

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

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

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

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

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

of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

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

§ 5.10 The Owner shall 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.

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

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

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

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

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

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

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

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

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 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 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 A201-2017, 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. A request for mediation shall be made in writing, delivered to the other party to this Agreement. 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.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

Init.

If the Owner and Architect do not select a method of binding dispute resolution, 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.

(Paragraphs Deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of 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 Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

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

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

.1 Termination Fee:

See Article 14.1.14 in the attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

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

Twenty Percent (20.00%) of the Architect's total fee as shown in Article 11.1 below.

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

Init.

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

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

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

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

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum
(Insert amount)
- .2 Percentage Basis
(Insert percentage value)
- .3 Other
(Describe the method of compensation)

Phase 1: Hourly at the Architect's Current Standard Hourly Rates as shown below in Article 11.7.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

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

Hourly Rates as shown in Article 11.7, unless a fee proposal is approved by the Architect at the time that the Additional Services are authorized.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00 %), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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

(Table Deleted)

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

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

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

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Expert witness and testimony provided by the Architect will be billed at twice the hourly rates as shown below.

Employee or Category	Rate (\$0.00)
Principal Architect	\$185.00 per hour
Architect	\$125.00 - \$150.00 per hour
Project Manager	\$120.00 - \$160.00 per hour
Design Staff	\$115.00 - \$130.00 per hour
Business Manager	\$100.00 per hour
School Intern	\$50.00 per hour
Consultants	At their standard hourly rates.

§ 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10.00 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

None known at this time.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The

Init.

Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments

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

18.00 % per annum

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. See Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1.1 This Agreement shall include miscellaneous consulting for related or future projects that may be requested by the Owner. Such services will be charged for as an additional service using the hourly rates as shown in Article 11.7 above unless other fee arrangements are requested.

§ 12.1.2 For Change Orders to the Construction Contract amount during the construction phase of each project, arising not from an error or omission by the Architect, the compensation to the Architect shall be Ten percent (10.00%) of the change order amount, regardless if it is an increase or decrease, and will be charged for as an additional service lump sum payment per change order.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
(Paragraph Deleted)

(Paragraph Deleted)

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

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

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

Exhibit A – Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.
Exhibit B – Supplemental Services Table 4.1.1 dated September 14, 2020.

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

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

OWNER (Signature)

Stacey Walker, Chair Board of Supervisors
(Printed name and title)

ARCHITECT (Signature)

Kyle Martin, AIA, LEED AP, President
(Printed name, title, and license number, if required)

Init.

Additions and Deletions Report for AIA® Document B101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:51:14 ET on 02/08/2021.

PAGE 1

AGREEMENT made as of the Fourteenth day of September in the year Two Thousand Twenty

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Linn County Board of Supervisors
935 2nd Street SW
Cedar Rapids, IA 52404

...

Martin Gardner Architecture, P.C.
700 11th Street
Suite 200
Marion, IA 52302
Telephone Number: 319-377-7604
Fax Number: 319-377-1175

...

Linn County Derecho Evaluation and Assessment
Various locations throughout Linn County, Iowa.
Linn County Evaluation and Assessment of Damage from the Derecho August 10, 2020.

PAGE 2

TABLE OF ARTICLES

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

...

Phase 1: Property Assessment and Report of approximately 30 properties owned by Linn County. The Architect will document observed damages and if it is determined the property also needs assessment of structural, mechanical, electrical, or plumbing components then the Architect will engage the appropriate engineer. Each property walk includes identification and assessment of exterior conditions of the buildings and property. If the exterior damage is significant an interior assessment of the building will also be conducted to determine the extent of the damage. At the conclusion of this phase of work the Architect will provide to the Owner a comprehensive report of the damages

observed and opinions of probable construction costs for each property. Each report will include required FEMA paperwork.

Phase 2: Construction Documents, Bidding, and Construction Administration of the properties identified from the Phase 1 report.

Refer to attached Exhibit B – Supplemental Services Table 4.1.1 dated September 14, 2020 for additional information regarding services that are and are not included in the Owner's program for the Project at this time.

PAGE 3

Assessment of approximately 30 properties owned by Linn County.

...

To be determined at the conclusion of Phase 1 services.

The Project's Scope and Architect's Fees are based on the Initial Information shown in this Agreement and no less than the Owner's budget for the Cost of the Work. Refer to Article 3.3.2 and 3.4.4 for changes to the Cost of the Work.

...

§ 1.1.4 The Owner's anticipated design and construction milestone ~~dates~~:dates. Milestone schedules will be maintained by the Architect during the course of the Project. The Architect will share with the Owner the initial Milestone schedule, and any subsequent changes to that schedule:

...

Schematic Design Completion: To be determined on a per Project basis.

...

Construction Documents Completion: To be determined on a per Project basis.

...

To be determined on a per Project basis.

...

To be determined on a per Project basis.

...

Final Completion and Owner Acceptance: Thirty (30) days after the date of Substantial Completion.

...

Competitive Quotes for projects less than \$135,000.00 and Public Bidding for projects greater than \$135,000.00 as defined by the State of Iowa law.

...

Not Applicable.

PAGE 4

Darrin Gage, Director of Policy and Administration
935 2nd Street SW
Cedar Rapids, IA 52404
Telephone Number: 319-892-5101
Email Address: Darrin.gage@linncounty.org

...

Linn County Board of Supervisors

...

.1 Geotechnical Engineer: To be determined on a per Project basis.

...

.2 Civil Engineer: To be determined on a per Project basis.

...

Asbestos Testing and Abatement Contractor

...

Lead Based Paid Testing and Abatement Contractor

...

Moisture Mitigation Contractor

...

Kyle Martin, AIA, LEED AP, President
Sarah Coleman, AIA, Project Manager
Martin Gardner Architecture, P.C.
700 11th Street
Suite 200
Marion, IA 52302
Telephone Number: 319-200-8486
Fax Number: 319-377-1175
Email Address: sarahc@martingardnerarch.com

...

§ 1.1.11.1 Consultants retained under Basic Services: (The Architect reserves the right to change Consultants, and will notify the Owner if such a change is required.

...

.1 ~~Structural Engineer:~~ Engineer (To be determined from the below selections as their workload permits):

...

M2B Structural Engineers

...

422 2nd Avenue SE

...

Suite B

...

Cedar Rapids, IA 52401

...

Telephone Number: 319-364-0666

...

Select Structural Engineering, LLC

...

606 14th Avenue SW

...

Cedar Rapids, IA 52404

...

Telephone Number: 319-365-1150

PAGE 5

West Plains Engineering

...

215 2nd Avenue SE

...

Suite 200

...

Cedar Rapids, IA 52401

...

Telephone Number: 319-365-0030

...

West Plains Engineering

...

215 2nd Avenue SE

...

Suite 200

...

Cedar Rapids, IA 52401

...

Telephone Number: 319-365-0030

...

None known at this time.

...

The Owner has completed property reviews their Insurance Company and Adjusters, Adjusters International/Tidal Basin. The Architect to complete assessments and reports of approximately 30 properties as identified by the Owner to receive funding to facilitate necessary repairs from FEMA.

...

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data. See attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

PAGE 6

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

...

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

...

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) each accident, Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) each employee, and Five Hundred Thousand Dollars and Zero Cents (\$ 500,000.00) policy limit.

...

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars and Zero Cents (\$ 1,000,000.00) per claim and One Million Dollars and Zero Cents (\$ 1,000,000.00) in the aggregate.

PAGE 7

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3. If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

PAGE 8

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Any changes requested by the Owner to the Schematic Design Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Design Development Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Schematic Design Phase Services.

...

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3. If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

...

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Any changes requested by the Owner to the Schematic Design or Design Development Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Construction Documents Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Design Development Phase and subsequent phases of Services.

...

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

PAGE 9

If the estimate of the Cost of the Work increases by Ten Percent (10.00%) or more from the Owner's budget for the Cost of the Work provided in the Initial Information, not due to the fault of the Architect, the Architect reserves the right to increase its Compensation set forth in Article 11 by the percentage that the estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work provided in the Initial Information or by an amount agreed upon by the Owner in advance.

...

§ 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. Any changes requested by the Owner to the Schematic Design, Design Development, or Construction Documents, after the Owner has previously given approval of these documents, will be charged for as an Additional Service at the hourly rates as shown in Article 11.7, or by an amount agreed upon in advance. The Architect will not proceed with the Procurement Phase of Services until the Owner has paid in full, or made a good faith payment or payments for the Construction Documents Phase and subsequent phases of Services.

...

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders. Additional Services will be charged at the hourly rates shown in Article 11.7 when substitutions require extensive research greater than two (2) hours of the Architect or Architect's Consultant time, per substitution.

...

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors. Additional Services will be charged at the hourly rates shown in Article 11.7 when substitutions require extensive research greater than two (2) hours of the Architect or Architect's Consultant time, per substitution.

PAGE 12

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES - Omit the following table in Article 4.1.1 and replace with attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

...

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

PAGE 13

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

...

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

PAGE 14

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

...

- .2 ~~(--)~~ visits The Architect shall provide site visits during construction of the Project as appropriate to the nature of the Project. Visits to the site by the Architect during construction are to be determined on a per Project basis. When this number is reached, the Architect shall notify the Owner. The Architect shall conduct site visits in excess of that number as an Additional Service; additional site visits will be charged for a flat rate of \$500.00 per visit

...

- .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~~Documents~~; additional meetings will be charged for a flat rate of \$500.00 per visit

...

- .4 One (1) inspections for any portion of the Work to determine final ~~completion~~ completion; additional meetings will be charged for a flat rate of \$500.00 per visit.

PAGE 15

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services. Services past 60 days will be billed as an Additional Service using the Hourly Rates as shown in Article 11.7.

...

§ 4.2.5 If the services covered by this Agreement have not been completed within Twenty-four (24) 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.

...

§ 4.2.6 Any services provided by the Architect more than Thirty (30) days after the date listed on the Certificate of Substantial Completion, not due to the fault of the Architect, shall be billed as an Additional Service using the hourly rates shown in Article 11.7.

...

§ 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. See attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

PAGE 17

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

PAGE 18

§ 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~~

~~this Agreement mediation. 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. Agreement.~~ 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.

...

[X] Litigation in a court of competent jurisdiction

PAGE 19

§ 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, 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. 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.

...

See Article 14.1.14 in the attached Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

...

Twenty Percent (20.00%) of the Architect's total fee as shown in Article 11.1 below.

PAGE 20

~~§ 10.1~~ This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice-of-law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3 located.

PAGE 21

~~(-) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

...

Phase 1: Hourly at the Architect's Current Standard Hourly Rates as shown below in Article 11.7.

...

See attached Exhibit B - Supplemental Services Table 4.1.1 dated September 14, 2020.

...

Hourly Rates as shown in Article 11.7, unless a fee proposal is approved by the Architect at the time that the Additional Services are authorized.

...

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10.00 %), or as follows:

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User Notes:

(3B9ADA49)

...

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction Documents Phase	percent (	%)
Procurement Phase	percent (	%)
Construction Phase	percent (	%)
Total Basic Compensation	one hundred percent (	100 %)

PAGE 22

Expert witness and testimony provided by the Architect will be billed at twice the hourly rates as shown below.

...

<u>Principal Architect</u>	<u>\$185.00 per hour</u>
<u>Architect</u>	<u>\$125.00 - \$150.00 per hour</u>
<u>Project Manager</u>	<u>\$120.00 - \$160.00 per hour</u>
<u>Design Staff</u>	<u>\$115.00 - \$130.00 per hour</u>
<u>Business Manager</u>	<u>\$100.00 per hour</u>
<u>School Intern</u>	<u>\$50.00 per hour</u>
<u>Consultants</u>	<u>At their standard hourly rates.</u>

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10.00 %) of the expenses incurred.

...

None known at this time.

...

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

PAGE 23

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

...

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

...

18.00 % per annum

...

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. See Exhibit A - Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

...

§ 12.1.1 This Agreement shall include miscellaneous consulting for related or future projects that may be requested by the Owner. Such services will be charged for as an additional service using the hourly rates as shown in Article 11.7 above unless other fee arrangements are requested.

§ 12.1.2 For Change Orders to the Construction Contract amount during the construction phase of each project, arising not from an error or omission by the Architect, the compensation to the Architect shall be Ten percent (10.00%) of the change order amount, regardless if it is an increase or decrease, and will be charged for as an additional service lump sum payment per change order.

...

~~2~~—AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

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

...

~~3~~—2 Exhibits:

...

[X] Other Exhibits incorporated into this Agreement:

PAGE 24

Exhibit A – Additional Contract Provisions and Modifications to the Standard Contract dated September 14, 2020.

...

Exhibit B – Supplemental Services Table 4.1.1 dated September 14, 2020.

...

~~4~~—3 Other documents:

...

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Kyle Martin, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:51:14 ET on 02/08/2021 under Order No. 3982459673 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Date: September 14, 2020

Project Name: Linn County Derecho Evaluation and Assessment

Exhibit A to Contract AIA B101-2017

Additional Contract Provisions and Modifications to the Standard Contract

14.1 ADDITIONAL CONTRACT PROVISIONS AND MODIFICATIONS TO THE STANDARD CONTRACT

14.1.2 Deficiencies in Services: Payment by the Owner of any invoice of the Architect without any written objection shall be interpreted to mean that the Owner is satisfied with the Architect's services reflected in the invoice and is not aware in any deficiencies in the Architect's services.

14.1.3 Disputed Invoices: If the Owner objects to any portion of an invoice, the Owner shall so notify the Architect within ten (10) calendar days of the receipt of the invoice. The Owner shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated in paragraph 11.10.2.1 shall be paid by the Owner on all disputed invoiced amounts resolved in the Architect's favor and unpaid for more than thirty (30) calendar days after date of submission.

14.1.4 Collection Costs: In the event legal action is necessary to enforce the payment provisions of the Agreement, the Architect shall be entitled to collect from the Owner any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by the Architect in connection therewith and, in addition, the reasonable value of the Architect's time and expenses spent in connection with such collection action, computed at the Architect's prevailing fee schedule and expense policies.

14.1.5 Defects in Service: The Owner shall promptly report to the Architect any defects or suspected defects in the Architect's work or services of which the Owner becomes aware, so that the Architect may take measures to minimize the consequences of such a defect. The Owner warrants that he or she will impose a similar notification requirement on all contractors in his or her Owner/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Owner, and the Owner's contractors or subcontractors to notify the Architect, shall relieve the Architect of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.

14.1.6 Electronic Files: Communication and information transfer is being conducted for this project in electronic form. The information and communications may include email, word processing, drawings, and other file transfers. It is acknowledged by the Owner that the information is being shared in this manner. Meetings where options and modifications are reviewed or discussed may only have information shared visually. Nothing in this agreement shall imply that the Architect is promising to supply computer software or hardware to the Owner or any Consultants or Contractors.

14.1.6.1 Electronic data formats for information to be shared with the Owner will include but not necessarily be limited to Adobe, Microsoft, and AutoCAD formats. Any changes to the electronic data formats by either the Owner or the Architect are subject to review and acceptance by the other party. Should the Owner be unable to utilize the file formats listed above, the Owner should at once notify the Architect of the problem. The Architect will endeavor to transfer the information into a different format, but shall not be responsible at any time to provide the Owner with software needed to read any data of any electronic data format. If the Architect is required to expend additional effort to incorporate changes to the electronic data formats made by the Owner, these efforts shall be compensated for as Additional Services. Should the Owner request that any Instruments of Service, progress or final construction documents, specifications, or correspondence be transmitted in electronic form to the Owner the terms of this agreement shall be extended to any electronic files, CADD or word-processing files, which are produced by the Architect for this project.

Date: September 14, 2020

Project Name: Linn County Derecho Evaluation and Assessment

14.1.6.2 In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Architect, the Owner agrees that all such electronic files are instruments of service of the Architect, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

14.1.6.3 The Owner agrees not to reuse these electronic files, in whole or in part, for any purposes other than for the Project. The Owner agrees not to transfer these electronic files to others without the prior written consent of the Architect. The Owner further agrees to waive all claims against the Architect resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Architect.

14.1.6.4 Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic files shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

14.1.6.5 The Owner is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Architect and electronic files, the signed or sealed hard-copy construction documents shall govern.

14.1.6.6 In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Architect or from any reuse of the electronic files without the prior written consent of the Architect.

14.1.6.7 Under no circumstances shall delivery of electronic files for use by the Owner be deemed a sale by the Architect, and the Architect makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Architect be liable for indirect or consequential damages as a result of the Owner's use or reuse of the electronic files.

14.1.7 Changed Conditions: The Owner and Architect agree that when changes in the project, this agreement may need to change. Changes may be required in light of occurrences or discoveries that were not originally contemplated or known by the Architect. Changes in the project which may necessitate re-negotiation of this contract shall include but not be limited to changes in the project scope, project budget, subsoil conditions, project delivery methods, regulatory changes or interpretations, and actions on the part of the Owner or Contractors that prolong the construction process, which are not the fault of the Architect. Should the Architect call for contract re-negotiation, the Architect shall identify the specific condition necessitating re-negotiation and the contract changes required. The Owner shall promptly respond to this notification and accept the change, propose an alternate contract modification or reject this change. Either party has the right to terminate this agreement in accordance with Article 9 of this Agreement.

14.1.8 Code Compliance: The Architect will exercise usual and customary professional care in his or her efforts to comply with all codes, regulations, and laws in effect as of the date of submission to local building code authorities. The Owner shall inform the Architect of any codes, regulations, or laws which are applicable to this project, and for which the Owner has information not commonly available within the construction industry.

Date: September 14, 2020

Project Name: Linn County Derecho Evaluation and Assessment

- 14.1.9 Confidential Communications: The Architect may be required to report on the past or current qualifications and performance of others engaged or being considered for engagement directly or indirectly by the Owner, and to render opinions and advice in that regard. Those about whom reports and opinions are rendered may as a consequence initiate claims of libel or slander or other claim against the Architect. To help create an atmosphere in which the Architect feels free to express himself candidly in the interest of the Owner, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the Architect, its officers, directors, employees and subconsultants (collectively Architect) harmless from any claim, liability, or cost (including reasonable attorney's fees and costs of defense) for injury or loss arising or allegedly arising from such professional opinions and reports rendered by the Architect to the Owner or Owner's agents. For publicly bid projects the Architect will comply with public policy in reporting the reliability of the Contractor. The Architect will provide references of past experience with the Contractor, but the decision to hire the Contractor is solely that of the Owner.
- 14.1.10 Known and Suspected Environmental Hazards: This paragraph supplements information outlined in Article 5. In consideration of the substantial risks to the Architect posed by the presence or suspected presence of asbestos or hazardous or toxic materials on or about the project site, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, his officers, directors, employees, agents, and independent consultants and any of them from all claims and losses, including reasonable attorney's fees and defense costs, arising out of, or in any way connected with, the performance or nonperformance of the obligations under this Agreement unless and until there has been an adjudication by a court forum of competent jurisdiction that the claims at issue are a direct result of the sole negligence of the Architect. The Architect will cooperate with the Owner to have hazardous material testing conducted on the project by a laboratory certified for this type of testing. If materials are identified in the course of that testing, the Owner agrees to hire a certified mitigation company to remove such materials from the project prior to start of the construction.
- 14.1.11 Contingency Fund: This paragraph supplements information outlined in Article 6 and specifically paragraph 6.3. The Owner and the Architect acknowledge that changes may be required because of possible changes in the Owner's requirements, omissions, ambiguities or inconsistencies in the plans and specifications and, therefore, that the costs of the project may exceed the construction contract sum. The Owner agrees to set aside a reserve in the amount of ten (10) percent of the actual project construction costs as a contingency reserve to be used, as required, to pay for any such increased project costs. The Owner further agrees to make no claim by way of direct or third-party action against the Architect or his subconsultants with respect to any payments within the limit of the contingency reserve made to the construction contractors because of such changes or because of any claims made by the construction contractors relating to such changes.
- 14.1.12 Architect Services: Should the services of the Architect not be continued beyond the schematic or design development phases of this contract, it is understood that the drawings and other instruments of services are preliminary and not meant for construction. Further the Owner agrees to indemnify and hold harmless the Architect from any claims which may arise out of the use of such schematic designs for construction purposes.
- 14.1.13 Termination or Suspension of Services: In the event that the Owner fails to make payment upon any invoice within 60 days of the invoice date, the Architect may suspend or terminate services at his option in accordance with Article 9. The Architect also shall have no liability whatsoever to the Owner for any costs or damages as a result of such suspension or termination caused by any breach of this Agreement by the Owner and shall be entitled to termination expenses. Should the Architect agree to restart services on the project, he shall have the right to compensation for expenses incurred in the interruption and resumption of the Architect's services.

Date: September 14, 2020

Project Name: Linn County Derecho Evaluation and Assessment

14.1.14 Termination Expenses: These expenses are in addition to compensation for contracted services, and include expenses, which are directly attributable to termination. Termination Expenses shall be the greater of One Thousand Dollars and Zero Cents (\$1,000), the actual documented cost of termination, or the amount computed as a percentage of the total compensation for the project earned to the time of termination as follows:

- 14.1.14.1 Twenty percent of the total compensation earned to date if termination occurs before or during the predesign, site analysis, master planning, schematic design, or similar project phase; or
- 14.1.14.2 Ten percent of the total compensation for services earned to date if termination occurs during the design development phase; or
- 14.1.14.3 Five percent of the total compensation for services earned to date if termination occurs during any subsequent phase;

Section	Supplemental Service	Description of Service	Phase of Service Provided	Party Responsible for Providing Additional Service	Location of Service or Document Reflecting Service Provided	Conditions or Extent of Services
4.1.1	<u>Programming</u>	Identification of building uses and the spaces required to meet these uses.	Phase 2: Programming Phase	Architect	Incorporated in Schedule of Spaces developed in Schematic Plans.	Any programmatic changes after the Schematic Design has been approved by the Owner will be billed for as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.2	<u>Multiple Preliminary Designs</u>	Providing more initial design concepts than the agreed upon amount.	Phase 2: Schematic Design	Architect	Incorporated in Schematic Plans.	No more than two (2) exterior schemes for Owner consideration per Project. Each additional scheme will be billed for as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.3	<u>Measured Drawings</u>	Field verifying critical dimensions of existing buildings or site.	Phase 2: Programming Phase/Schematic Design	Architect	Incorporated in Schematic Plans.	If additional field measurements or site survey for concealed conditions is required this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.4	<u>Existing Facilities Surveys</u>	Field verifying conditions of the existing structure and identification of conditions requiring attention.	Phase 1: Property Assessment and Report	Architect	Phase 1: Property Assessment and Report	Included as a part of Phase 1 services.
4.1.5	<u>Marketing/Fundraising</u>	Activities requested by the Owner and/or outside Fundraising Consultant for the Project.	Not Provided	Owner and/or Fundraising Consultant	Not Provided	If additional renderings are requested by the Owner or Fundraising Consultant other than what is shown in the Architect's proposal for services, then those services shall be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.6	<u>Site Evaluation and Planning AIA Agreement B203-2017</u>	Analyzing and proposing alternative conceptual designs on alternate available building sites.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.7	<u>Building Information Modeling (BIM)</u>	Computerized identification and coordination of building systems in a graphic environment.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.8	<u>Civil Engineering</u>	Design of the site for the proposed building.	Not Provided	Civil Engineer	Construction Documents.	Should a Civil Engineer be required for the Project the Architect will solicit a Civil Engineer.
4.1.9	<u>Landscape Design</u>	Selection of decorative and sustainable plantings to surround the building and site.	Not Provided	Architect and/or Landscape Architect and/or Civil Engineer	Not Provided	Architect and Civil Engineer will coordinate planting of grass around the building. Decorative landscaping will be provided by the Owner, volunteers, or through a separate design contract with a landscaper or Landscape Architect. Architect will assist owner in obtaining proposals from landscapers if desired.
4.1.10	<u>Architectural Interior Design</u>	Selection of wall, floor, ceiling, wood trim, doors, door frame, and other miscellaneous building construction related finishes and colors.	Not Provided	Architect	Schematic Design and Construction Documents	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.11	<u>Value Analysis AIA Document B204-2007</u>	Detailed comparative analysis of cost comparisons.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.12	<u>Detailed Cost Estimating</u>	Provide construction costs in detailed format similar to the detail assembled by Contractors in preparing bids for the project.	Not Provided	Owner/General Contractor	Not Provided	The Architect provides opinions of construction cost as a part of basic services. These opinions provide some breakdown of costs. Detailed breakdown of costs can be obtained from specialized project estimating services that can be retained as an Additional Service.
4.1.13	<u>Bid Alternates</u>	A bid alternate is a defined portion of the Project that is priced separately and thus provides an option for the Owner in determining the final scope of the Project during bidding and is reflected in the Construction Documents. Alternates provide the Owner with a choice between different products or can define the addition or deletion of a portion of the Project.	Not Provided	Architect	Construction Documents and Bidding	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.

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4.1.14	<u>Multiple Bid Packages</u>	Bidding the project in multiple bid packages rather than one lump sum bid amount.	Not Provided	Architect	Construction Documents and Bidding	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.15	<u>Re-Bidding</u>	Rejection of the Project bids at the Owner's discretion and modifications of the Project scope for re-bidding purposes as reflected in revised Construction Documents for bidding.	Not Provided	Architect	Construction Documents and Bidding	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.16	<u>Value Engineering</u>	Changes to the Construction Documents after bids have been received in order to reduce the Project cost and/or scope.	Not Provided	Architect/Contractor	Construction Documents and Bidding	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.17	<u>Extended On Site Project Representation</u>	Representation on the site by members of the Architectural team on a daily or extended basis. Basic services are outlined in Section 3.6.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.18	<u>Confirmed Construction Documents</u>	A separate set of drawings prepared after bidding has completed to document any changes made during the bidding process. Normally not provided at this scale of project.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.19	<u>As-Designed Record Drawings</u>	These are drawings which represent every design change in the project. These and As-Built Record Drawings are combined on this scale of project.	Provided as part of 4.1.19	Architect	See 4.1.19	If the Owner requests separate As-Designed Record Drawings, this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.20	<u>As-Constructed Record Drawings</u>	Drawings prepared at the end of the Construction Phase which reflect changes made in the project during construction. These drawings are prepared as the project progresses during construction. Each construction trade records their changes. The final record is submitted to the Architect for review prior to transmittal to the Owner.	Phase 2: Construction Phase	General Contractor (Included in services covered by the Construction Contract.)	As-Built Drawings: Architect's review of the as-built drawings prepared by the Contractor is included in the services covered by this agreement.	If the Owner is requesting separate As-Built Record Drawings to be provided by the Architect, this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.21	<u>Post Occupancy Evaluation</u>	A formal review process hosted by the Architect for building users.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.22	<u>Facility Support Services AIA Document B210-2017</u>	Documentation and surveys that support the operation of the facility.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.23	<u>Tenant Related Services</u>	For use in buildings with rentable area.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.24	<u>Architect Coordination of Owner's Consultants</u>	Answer questions, finalize pricing, and coordinate installation of equipment and systems provided by parties contracted for by the Owner directly and separate from the building design team.	As needed by the Owner	Architect	Not Provided	Possible separate consultants hired by the Owner include but are not limited to telephone equipment, data, security, and furniture.
4.1.25	<u>Telecommunications/Data Design</u>	Specify and obtain pricing for telecommunications and data systems for the building. Coordinate final installation of systems with supplier and/or installer.	Not Provided	Owner/Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.26	<u>Security Evaluation and Planning AIA Document B206-2007</u>	Study of security needed for high level threats to building occupants. The AIA Contract Document B206-2007 includes extensive site and building design for security planning that go far beyond the budget of this project.	Not Provided	Owner/Architect	Basic Services	The Architect will provide as a part of this agreement for services, information about door security and other electronic systems. Floor plan design will consider visual security of the project. No dedicated studies or use of security consultants is included in the Project.
4.1.27	<u>Commissioning AIA Document B211-2007</u>	Commissioning is a process required as a part of the start up of LEED projects and certain Grant Programs.	Not Applicable	Architect and Commissioning Agent	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.28	<u>Sustainable Project Services pursuant to Section 4.1.3 AIA Document E204-2017</u>	Sustainability services as required in AIA Document E204-2017, Sustainable Projects Exhibit.	Not Provided	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.

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4.1.29	<u>Extensive Environmentally Responsible Design</u>	Analysis of the entire universe of environmental responses to the building design and process. This has not been defined as a goal of the Owner for this Project.	Not Applicable	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.30	<u>LEED Certification AIA Document B214-2007</u>	LEED Certification has not been identified as a goal of the Owner for this Project.	Not Applicable	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.31	<u>Fast-Track Design Services</u>	This is a method of building design where a building starts construction before Construction Documents are completed. This has not been identified as a goal of the Owner for this Project.	Not Applicable	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.32	<u>Historic Preservation AIA Document B205-2007</u>	For use in historically significant or designated structures.	Not Applicable	Architect	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.
4.1.33	<u>Furniture, Furnishings, and Equipment Design AIA Document B253-2007</u>	Selection, specification, and pricing of furniture, furnishings, and equipment for the Project.	Not Applicable	Architect and/or Interior Designer	Not Provided	If requested this would be provided as an Additional Service at the hourly rates as shown in Article 11.7, or at a fee agreed upon in advance.