

# AIA® Document B101™ – 2017

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eleventh day of April in the year Two Thousand Twenty-Two

*(In words, indicate day, month and year.)*

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

County of Haywood, North Carolina  
215 N. Main Street  
Waynesville, North Carolina 28786  
Telephone Number: (828) 452-6625

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

Moseley Architects P.C.  
6210 Ardrey Kell Road  
The Hub at Waverly, Suite 425  
Charlotte, North Carolina 28277  
Telephone Number: (704) 540-3755

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

Haywood County, North Carolina Detention Facility Expansion

Approximately 145 new bed expansion consisting of three (3) 39 bed double-units, an 8 bed segregation unit with single cells, and a 20 bed single celled unit (can be double occupied) of approximately 33,500 sf new construction. The Project also includes new security systems integration into the existing facility, and miscellaneous renovations and improvements to the existing facility. Refer to Exhibit B.

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.

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**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.)*

To be determined as the Project progresses

**§ 1.1.2 The Project's physical characteristics:**

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

Expansion of the existing facility located at 1620 Brown Avenue, Waynesville, North Carolina 28786

**§ 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.)*

\$17,000,000.00 - Refer to Exhibit B.

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

- .1 Design phase milestone dates, if any:

To be determined as the Project progresses

.2 Construction commencement date:

To be determined as the Project progresses  
(Paragraph Deleted)

.3 Substantial Completion date or dates:

To be determined as the Project progresses

.4 Final Completion date or dates:

To be determined as the Project progresses

.5 Other milestone dates:

Not Applicable

**§ 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.)

A stipulated sum construction contract with a single Contractor pursuant to competitive bidding

**§ 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.)

Bryant Morehead, County Manager  
County of Haywood, North Carolina  
215 N. Main Street  
Waynesville, North Carolina 28786  
Telephone Number: (828) 452-6725

**§ 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.)

Not Applicable

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

(Paragraph Deleted)

Not Applicable

*(Paragraphs Deleted)*

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

Daniel R. Mace, AIA, Vice President  
Moseley Architects P.C.  
6210 Ardrey Kell Road  
The Hub at Waverly, Suite 425  
Charlotte, North Carolina 28277  
Telephone Number: (704) 540-3755

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

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Moseley Architects P.C.

.2 Mechanical Engineer:

Moseley Architects P.C.

.3 Electrical Engineer:

Moseley Architects P.C.

.4 Plumbing Engineer:

Moseley Architects P.C.

.5 Civil Engineer:

McGill Associates  
55 Broad Street  
Asheville, North Carolina 28801

.6 Design for Food Facilities:

Not Applicable

.7 Technology:

Not Applicable

.8 Security Systems Design:

Moseley Architects P.C.

.9 Energy Modeling:

Not Applicable

.10 Cost Estimating

Metts Consulting Co., LLC  
507 O'Neill Drive  
Jamestown, North Carolina 27282

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not Applicable

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

Not Applicable

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

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

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

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

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

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

§ 2.2.1 Subject to the standard of care set forth in Section 2.2 for applying professional judgment to the information used or relied upon, Architect and its Consultants may use and rely upon design elements, technical standards, test results, and all other information ordinarily or customarily furnished or published by others, including, but not limited to, specialty contractors, manufacturers, fabricators, and suppliers.

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

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

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§ 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 (\$ 1,000,000.00 ) for each occurrence and two million dollars (\$ 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 a combined single limit one million dollars (\$ 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.

§ 2.5.4 Workers' Compensation at statutory limits.

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

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$ 1,000,000.00 ) per claim and one million dollars (\$ 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 usual and customary Architect's Basic Services consist of those indicated in Section 1.1.11.1 and as described in this Article 3. Services not indicated in Section 1.1.11.1 and 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.

§ 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.

§ 3.1.3.1 The Owner and Architect are aware that many factors outside the Architect's reasonable control may affect the Architect's ability to complete the services to be provided under this Agreement. The Architect will perform these services with reasonable diligence and expediency consistent with sound professional practices. For purposes of this Agreement, such factors include, but may not be limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters or acts of God; fires, riots, war, pandemics, epidemics, quarantines, or other local, state, or national declared emergencies; failure of any government agency to act in timely manner; failure of performance by the Owner or the Owner's representatives, contractors or consultants; or discovery of any hazardous substances or differing site conditions or other similar or reasonably unforeseen events. Notwithstanding the above factors, Architect reserves the right to seek common law defenses as may be applicable if such services are adversely affected.

§ 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 acceptance.

§ 3.1.5 The Architect shall, at appropriate times, 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.

§ 3.1.7 The Architect shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of the submission to building authorities. Design changes made necessary by newly enacted laws, codes and regulations after this date, may, if agreeable to both parties, require a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Services provisions of this Agreement. In the event of a conflict between the applicable laws, codes and regulations of various governmental entities having jurisdiction over this Project, the Architect shall notify the Owner of the nature and impact of such conflict. The Owner agrees to cooperate and work with the Architect in an effort to resolve this conflict.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review 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.

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

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

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

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

### § 3.3 Design Development Phase Services

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

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

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

### § 3.4 Construction Documents Phase Services

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

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

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

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

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



### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid; 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 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to, prospective bidders;**
- .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 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.**

*(Paragraphs Deleted)*

### **§ 3.6 Construction Phase Services**

#### **§ 3.6.1 General**

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

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

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

#### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1 The Architect shall visit the site as 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**

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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 the Owner. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

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

**§ 3.6.3 Certificates for Payment to Contractor**

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

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

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

**§ 3.6.4 Submittals**

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

**§ 3.6.4.2** The Architect shall review and 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 general 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.

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

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

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

### **§ 3.6.5 Changes in the Work**

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

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

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

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

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

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

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

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

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

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

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

<b>Supplemental Services</b>	<b>Responsibility (Architect, Owner, or not provided)</b>
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Up to three (3) options as Part of Basic Services
§ 4.1.1.3 Measured drawings	Not Provided/Applicable
§ 4.1.1.4 Existing facilities surveys	Not Provided/Applicable
§ 4.1.1.5 Site evaluation and planning	Not Applicable
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering, Wetland Delineation, and Topographic Survey.	Architect - Refer to Exhibit C
§ 4.1.1.9 Landscape design	Architect
§ 4.1.1.10 Architectural interior design	Not Applicable
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating	Architect - Design Development Phase Construction Documents Phase
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Not Provided
§ 4.1.1.15 As-designed record drawings	Not Provided
§ 4.1.1.16 As-constructed record drawings	Architect
§ 4.1.1.17 Post-occupancy evaluation	Not Provided
§ 4.1.1.18 Facility support services	Owner
§ 4.1.1.19 Tenant-related services	Owner
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not Provided
§ 4.1.1.21 Telecommunications/data design	Not Provided
§ 4.1.1.22 Security evaluation and planning	Architect
§ 4.1.1.23 Commissioning	Not Provided
§ 4.1.1.24 Sustainable Project Services pursuant to Exhibit A	Not Provided
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Not Provided
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture design/FF & Design Services	Not Provided
§ 4.1.1.29 Energy Modeling	Not Provided

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§ 4.1.1.30 Life Cycle Cost Analysis and Energy Modeling as Design Tool	Not Provided
§ 4.1.1.31 Jail Activation/Transition Planning – Refer to Exhibit A	Architect

**§ 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.

*(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.)*

Not Applicable

*(Paragraphs Deleted)*

**§ 4.2 Architect's Additional Services**

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

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

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

*(Paragraphs Deleted)*

- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

*(Paragraph Deleted)*

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;  
or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 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;

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- .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 Sixty ( 60 ) visits to the site by the Architect during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion.

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

**§ 4.2.5** If the services covered by this Agreement have not been completed within thirty-six ( 36 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

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

**§ 5.1.1** The Architect may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Architect shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's consultants and contractors.

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

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

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

above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 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(s) or suspected defect(s) in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or in the Architect's professional services, so that the Architect may be afforded the opportunity to address such alleged fault or defect(s). Failure by the Owner to promptly notify the Architect in writing of the discovery or suspicion of such fault or defect(s) shall relieve the Architect of liability for any damages caused by the fault or defect(s) in excess of the damages that would have been incurred if the Owner had given prompt notification to the Architect when such fault or defect(s) were first discovered or suspected by the Owner, and the Architect had promptly corrected such fault or defect(s).

§ 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.

§ 5.16 If the Owner retains the services of a Value Engineer (VE), or similar entity, to review the plans prepared by the Architect, these services shall be at the Owner's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of the Architect's services. All recommendations of the VE shall be given to the Architect for review, and adequate time shall be provided for the Architect to respond to these recommendations. If the Architect objects to any recommendations made by the VE, it shall so state in writing to the Owner, along with

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the reasons for objecting. If the Owner, despite the Architect's objections, requires the incorporation of changes in the Construction Documents, the Owner agrees, to the fullest extent permitted by law, to waive all claims against the Architect which arise in connection with or as a result of the incorporation of such design changes required by the Owner.

§ 5.17 The 179D tax deduction incentivizes building owners and designers for designing energy-efficient building systems, including lighting, HVAC, and building envelope components. Since government entities do not pay taxes, this deduction is not available to you, the Owner. Current tax code allows for this deduction to be allocated to the Architect on eligible projects to help incentivize energy-efficient building design. Per the Department of Treasury, the Architect shall not have to pay a fee or allocate any portion of the potential deductions to the Owner to receive an allocation letter. The Owner further recognizes that the Architect, unless they opt-out, is the only entity eligible to pursue such allocations in accordance with 26 U.S. Code § 179D, which reads in part, "*The allocation of the deduction [is] to the person primarily responsible for designing the property in lieu of the owner of such property.*" To ensure compliance with the U.S. Code, the Owner agrees to sign such an allocation letter after receiving a request from the Architect to do so. The Architect shall be responsible for obtaining and procuring a letter of certification from a third-party entity who will perform the required energy modeling and conduct a physical site visit of the Project, and the Architect shall also be responsible for any certification fees and distribution of deductions ultimately approved by the IRS.

#### 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 the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

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

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

- .1 give written approval of an increase in the budget for the Cost of the Work;



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

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

#### **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Architect and the Owner agree 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. Under no circumstances shall the transfer of ownership of the Drawings, Specifications, electronic data or other Instruments of Service be deemed to be a sale by the Architect, and the Architect makes no warranties, express or implied, of merchantability or of fitness for a particular purpose.

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

§ 7.3 Upon full payment of all sums due or anticipated to be due Architect under this Agreement and upon performance of all the Owner's obligations under this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations 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.

§ 7.6 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 and sealed construction documents prepared by the Architect and the electronic files, the signed and sealed hard-copy construction documents shall govern.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, including indemnity and any statutes of limitations and repose, 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 eight (8) 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.

### § 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, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 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)*

*(Paragraph Deleted)*

### § 8.3

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*(Paragraphs Deleted)*

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 including Reimbursable Expenses then due.

*(Paragraphs Deleted)*

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

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

#### **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. No headings or numbering of Sections or Paragraphs in This Agreement shall be interpreted or construed to change or modify the duties and obligations of Owner or Architect.

§ 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.

§ 10.4 Pursuant to 10.11, 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, third-party rights or benefits, with or a cause of action in favor of a third party person or entity against either the Owner or the Architect. The Architect's services, Instruments of Service, and work product required under this Agreement are being performed and are intended solely for the Owner's use and benefit.

**§ 10.6** 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 "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) 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.

*(Paragraph Deleted)*

**§ 10.10** If, due to the Architect's negligence, a required item or component of the Project is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will the Architect be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

*(Paragraph Deleted)*

**§ 10.11** The Architect shall not be required to sign any documents that would result in the Architect having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain, or that in any way might increase the Architect's risk or the availability or cost of its insurance.

(Paragraphs Deleted)

§ 10.12 The Architect agrees to maintain all documents, including electronic documents, related to the Project for a period of not less than seven (7) years, in a reasonably accessible manner consistent with the Architect's internal document retention policy.

(Paragraph Deleted)

§ 10.13 The section headings used in this Agreement are intended principally for convenience and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the parties to this Agreement.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Services described herein, the Owner shall compensate the Architect as follows:  
(Paragraph Deleted)

Compensation for Schematic Design, Design Development, Construction Documents, Bidding, and Construction Contract Administration Phase Services shall be the lump sum of One Million, Seven Hundred Thirty-Five Thousand, Fifty and 00/100 Dollars (\$1,735,050.00).

For Jail Activation/Transition Planning Services per Exhibit A – Compensation shall be the lump sum of Sixty-Five Thousand and 00/100 Dollars (\$65,000.00).

For Site Wetland Delineation and Topographic Surveying Services per Exhibit C - Compensation shall be the lump sum of Thirty-Eight Thousand, Four Hundred and 00/100 Dollars (\$38,400.00).

§ 11.2 Not Used

§ 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.)

As mutually agreed as Additional Services are required.

§ 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 twenty percent ( 20 %), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 The proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Procurement Phase	05%
Construction Phase	20%
<hr/>	
Total Basic Compensation	100%

(Paragraphs Deleted)

§ 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.)

**Schedule of Hourly Billing Rates  
Calendar Year 2022**

Principals	\$242
Architects	
Senior Project Manager	\$219
Project Manager	\$172
Architect	\$164
Project Designer	\$109
Security and Detention Design	
Security Design Specialist	\$207
Moseley Engineering Director	\$242
Moseley Mechanical/Electrical/Plumbing/Engineering	
Senior Engineer	\$192
Engineer/Designer	\$157
Intern Technician	\$109
Moseley Structural Engineering	
Senior Engineer	\$172
Engineer/Designer	\$143
Intern Technician	\$109
Moseley Interior Design	
Interior Design Director	\$191
Senior Interior Designer	\$129
Project Interior Designer	\$109
Corrections Planner	\$242
Criminal Justice Consultant	\$187
Construction Administration	
Construction Administrator	\$164
Specification Writer	\$164
Sustainability Planning	
Sustainability Planning Director	\$192
Energy Analyst	\$161
Sustainability Coordinator	\$143

Administrative

Rates are subject to change on January 1 of each year.

(Table Deleted)

**§ 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

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follows:

*(Paragraphs Deleted)*

- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents for Bidding purposes;
- .5 Postage, handling, and delivery;
- .6
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project (unless specifically included in the Basic or Supplemental Services);
- .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
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred. Reimbursable expenses are anticipated not to exceed \$50,000.00.

**§ 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.)*

#### **§ 11.10 Payments to the Architect**

*(Paragraphs Deleted)*

##### **§ 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.)*

12 % twelve percent 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 and final dispute resolution proceeding.

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

#### **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

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

12.1 Neither the Architect nor the Architect's consultants have offered, intends to offer, or shall be required to offer, any fiduciary service to the Owner and no fiduciary responsibility shall be owed to the Owner by either the Architect or the Architect's consultants as a result of the Owner and Architect entering into this Agreement.

12.2 **NON-DISCRIMINATION.** During the performance of this Agreement, the Architect agrees as follows:

12.2.1 The Architect will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

12.2.2 Architect shall state in all solicitations or advertisements for employees placed by or on behalf of the Architect that the Architect is an equal opportunity employer.

12.2.3 Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient compliance with this provision.

12.2.4 The Architect agrees to include the provisions of 12.2.1, 12.2.2, and 12.2.3 above in every subcontract over \$10,000 so that the provisions will be binding upon each subcontractor.

12.3 During the performance of this Agreement, the Architect agrees to (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on its behalf that it maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with this Agreement in which the employees of the Architect are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

12.4 The requirements of the Americans with Disabilities Act (ADA), Fair Housing Act (FHA) and other federal, state and local accessibility laws, rules, codes, ordinances and regulations will be subject to various and possibly contradictory interpretations. Federal accessibility laws and regulations are not part of, or necessarily compatible with, state or local laws, codes and regulations governing construction. The Architect, therefore, will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of submission to building authorities, and as they apply to the Project. Therefore, the Architect recommends the Owner obtain appropriate legal counsel with respect to compliance with the appropriate disability access laws.

12.5 The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees, to the extent caused by the Architect's negligent performance of professional services under this Agreement and that of its consultants or anyone for whom the Architect is legally liable. Neither the Owner nor the Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others that they are not legally liable.

12.6 Architect's Services shall be limited to those expressly set forth in this Agreement. Architect shall have no other obligations or responsibilities for the Project except as agreed to in writing.

12.7 The Contractor and Subcontractors will be solely in control of the Project site and exclusively responsible for construction means, methods, scheduling, sequencing, jobsite safety and compliance with all Construction Documents and directions from Owner or building officials.



12.8 Only upon the written request or direction of Owner, any value engineering, substitutions, or other cost-reduction effort or analysis that results in similar evaluations, is performed on this Project, the Architect shall provide its opinion to the Owner with respect to proposed or requested changes in materials, products, systems, or equipment. The Architect shall be entitled to rely on the accuracy and completeness of the information provided in conjunction with the requested change(s). The Owner acknowledges that such changes may result in a reduction in the quality and performance of the materials, components, or project. Accordingly, the Architect shall not be responsible for such reduction in performance by incorporating such value engineered, substituted, or otherwise incorporated materials, products, systems, or equipment into the Project.

12.9 If the Owner directs the Architect to specify any product or material after the Architect has informed the Owner that such product or material may not be suitable or may embody characteristics that are suspected of causing or may cause the product or material to be considered a hazardous substance in the future, the Owner waives all claims as a result thereof against the Architect.

12.10 The Architect and/or its consultant will prepare a plan indicating the locations for known existing subsurface infrastructure with respect to assumed locations of existing underground improvements. Such services by the Architect and/or its consultant will be performed in a manner consistent with the Architect's professional standard of care. However, such plans may not identify all existing underground infrastructure and that the information upon which the Architect reasonably relies may contain errors or may be incomplete. Therefore, the Owner agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the Architect for damages to existing underground infrastructure and improvements resulting from subsurface penetrations in locations established by the Architect that are based on properly filed and available records of said existing underground infrastructure.

12.11 The Architect and/or its consultant will prepare a plan indicating the locations for known existing subsurface infrastructure with respect to assumed locations of existing underground improvements. Such services by the Architect and/or its consultant will be performed in a manner consistent with the Architect's professional standard of care. The Owner recognizes, however, that such plans may not identify all existing underground infrastructure and that the information upon which the Architect reasonably relies may contain errors or may be incomplete. Therefore, in addition to the other indemnities provided for the Architect's protection elsewhere in this Agreement, the Owner agrees, to the fullest extent permitted by law, to waive all claims and causes of action against the Architect and anyone for whom the Architect may be legally liable for damages to existing underground infrastructure and improvements resulting from subsurface penetrations in locations established by the Architect that are based on properly filed and available records of said existing underground infrastructure.

12.12 This Agreement may be executed in one or more counterparts and shall be effective when all the Parties have signed a counterpart hereof. Electronic transmission of original signatures in .pdf or similar format are as final and binding as pen and ink originals executed and exchanged in the presence of all Parties.

#### 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  
(Paragraphs Deleted)

.3  
(Paragraphs Deleted)

Exhibits:  
(Paragraphs Deleted)

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


Exhibit A – Transition Services  
Exhibit B – Schematic Floor Plans and Cost Estimate

Exhibit C Survey, Wetland Delineation, and Site Civil Engineering Scope – McGill Proposal dated May 2, 2022.

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

  
OWNER (Signature)

Bryant Morehead, County Manager  
County of Haywood, North Carolina  
*(Printed name and title)*

  
ARCHITECT (Signature)

Daniel R. Mace, AIA, Vice President  
Moseley Architects P.C.  
*(Printed name, title, and license number, if required)*

Int.

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# EXHIBIT A

## Transition Services for the Haywood County Detention Center Addition

### 12 Major Tasks

1. **Organize the Transition and Occupancy Project**
    - Project Kick-Off Meeting
    - Transition Team Organization and Training
    - Assist with development of Facility Mission Statement and Goals
  2. **Develop/Update the Transition Master Plan Schedule**
  3. **Coordinate, Review Transition Activities throughout Project**
    - Monthly on-site meetings
    - Review and update tasks
  4. **Review Plans/Finalize Staffing Plan**
    - Develop key posts and determine 24/7 relief requirements
    - Develop facility schedule to address staff efficiencies and workload
  5. **Prepare a Personnel Activation Schedule**
  6. **Guide Development of Position Descriptions**
    - Determine new positions
    - Confirm position descriptions reflect competencies and task requirements
  7. **Guide Furnishings, Fixtures and Equipment**
    - Assist development of master list
    - Guide coordination of purchasing and storage in advance of activation
  8. **Review Scenarios, SOP and Post Orders, Inmate Handbook**
    - Educate team and assist with scenario development and testing
    - Assist with development of operating procedures, rules, policies to fit new structure
    - Review development of post orders based on procedures
    - Develop operational policies and procedures for detention to comply with local, state, and federal to include PREA
    - Develop inmate handbook
  9. **Develop and Assist with Coordination of Pre-Occupancy Training**
    - Guide coordination of training plan and curriculum for new facility
    - Assist with training of trainers, conduct initial classroom training and run initial scenario and emergency drills
    - Observe development of orientation for facility users to include other agencies, visitors, prisoners, EMS
-

**10. Review Detention Classification Plan**

- MD1 and Max

**11. Assist with Move- In Logistics Plan**

- Develop plan and schedule
- Coordinate facility shakedown

**12. Conduct Post-Occupancy Evaluation**

- Provide assistance to management initially to adjust plans or policy
  - Conduct formal evaluation on site
-

OPINION OF PROBABLE TOTAL PROJECT COST

EXHIBIT B

**MOSELEYARCHITECTS**  
A PROFESSIONAL CORPORATION

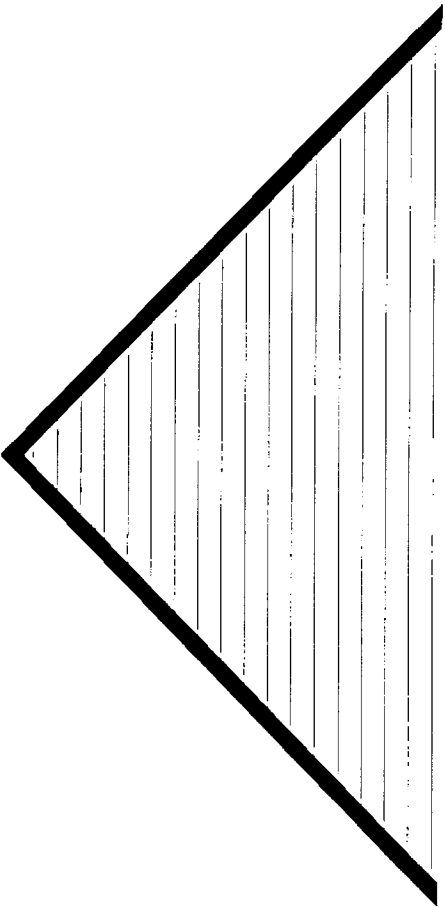
Client: Haywood County, NC  
 Project Name: Detention Facility Expansion Study  
 Description: Expansion to Existing Facility  
 Project #621193 145 New Beds - 33,500 Additional S.F

Date: May 5, 2022  
 Computed By: DRM  
 Checked By: DRM  
 Sheet Number: 1 of 1

Item No.	Description	Area	Unit	Unit Cost	Total Cost
<b>Construction Costs</b>					
1	New Jail Construction	30,000	SF	\$425.00	\$12,750,000.00
2	Recreation Yards	3,500	SF	\$275.00	\$962,500.00
3	Miscellaneous Renovations / Improvements to Existing	N/A	N/A	Lump Sum	\$250,000.00
4	Renovate Existing Control Room to Increase Security	N/A	N/A	Lump Sum	\$275,000.00
5	Site Development / Demolition / New Parking	N/A	N/A	Lump Sum	\$1,500,000.00
6	Construction / Design Contingency	N/A	%	5.00%	\$786,875.00
7	Cost Escalation Contingency (12 months)	N/A	%	5.00%	\$826,218.75
	<b>Subtotal</b>				<b>\$17,350,593.75</b>
	<b>Estimated Construction Cost - Building and Sitework</b>	<b>33,500</b>	<b>SF</b>	<b>\$517.93</b>	<b>\$17,350,593.75</b>
<b>Project Costs</b>					
1	Fixtures, Furnishings & Equipment (FF&E of finished space)	N/A	%	2.00%	\$347,011.88
2	Site and Construction Testing	N/A	%	1.50%	\$260,258.91
3	Architectural and Engineering Fees	N/A	N/A	Lump Sum	\$1,735,050.00
4	Jail Transition / Activation Planning Services	N/A	N/A	Lump Sum	\$65,000.00
5	Site Survey and Wetland / Stream Delineation (McGill)	N/A	N/A	Lump Sum	\$38,400.00
	<b>Subtotal</b>				<b>\$2,445,720.78</b>
	<b>TOTAL ESTIMATED PROJECT BUDGET</b>				<b>\$19,796,314.53</b>
<b>Notes:</b>					
New Housing - (3) 39 bed double-celled units					
(1) 8 bed segregation unit - single cells					
(1) 20 bed single-celled unit sized for double occupancy if needed					
Security system integration into existing facility					
Miscellaneous renovations/improvements to existing facility					

CY = Cubic Yard  
 LF = Lineal Foot  
 LS = Lump Sum  
 SF = Square Foot  
 SY = Square Yard

x  
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J

—

I



May 2, 2022

Mr. Dan Mace, AIA, LEED Accredited Professional  
Vice President  
Moseley Architects  
6210 Ardrey Kell Road  
The Hub at Wavery, Suite 425  
Charlotte, North Carolina 28277

RE: Proposal for Engineering Services  
Haywood County Detention Center  
Haywood County, North Carolina

Dear Mr. Mace,

We are pleased to submit this proposal to furnish Civil Engineering Services for the above referenced project to Moseley Architects (Moseley). It is our understanding that the project generally consists of a detention center expansion with associated driveways, parking and stormwater installations for Haywood County (Owner) on the current detention center site. The proposed civil design services will include plans for site layout, grading, storm drainage, stormwater management, erosion control, utility services, landscaping and construction details. Construction details will include related specifications including submittals to local approval agencies.

#### **PROJECT UNDERSTANDING AND ASSUMPTIONS**

Based on preliminary discussions with Moseley and the County, we understand that the County wishes to develop a +/- 33,500 square foot expansion along with potential renovations to the existing facility.

We also make the following assumptions:

1. Public domestic water and sanitary sewer service is available to the facility.
2. Sufficient fire flow is available at the facility.
3. The following reviewing authorities have jurisdictional review authority of the civil/site plans:
  - a. Town of Waynesville – Planning and Zoning, Storm Water, Water, Sewer.
  - b. NCDOT –Right-of-Way Encroachments.
  - c. NCDEQ – Erosion Control.
4. Owner will pay any project regulatory review fees.
5. No offsite improvements are proposed or accounted for in this proposal.
6. Owner will contract with a single contractor for development of the project. An early site package will not be required.

## SCOPE OF SERVICES

Based on this understanding of the project, we anticipate providing the following Basic Services:

### **Preliminary Stream / Wetland Delineation**

- 1. A jurisdictional determination of the project area will be completed. The jurisdictional determination will include a delineation of the project area by McGill Associates, PA Environmental Specialists performed in accordance with the guidelines and standards of the US Army Corps of Engineers (USACE) - Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (Version 2.0), and the NC Division of Water Resources (NCDWR) – Methodology for Identification of Intermittent and Perennial Streams and Their Origins v. 4.11. Any jurisdictional areas found on the property will be flagged and located with GPS accuracy in the field.**
- 2. Jurisdictional wetlands and waters or potential habitat will be located within sub-meter accuracy utilizing an Arrow 100 submeter Global Navigation Satellite System (GNSS) receiver GPS and the subsequent differential correction of that data. GPS points may demonstrate uncorrectable errors due to topography, vegetative cover, and/or multipath signal error. The provided digital map will be intended for informational purposes only and should not be used to determine precise boundaries, roadways, property boundary lines, nor legal descriptions. The map shall not be construed to be an official survey of any data depicted.**

### **Topographic Surveying**

- 1. Horizontal and vertical geodetic survey control on NAD83(2011) and NAVD88 (GEOID12A).**
- 2. Mapping to include the area inside the mapping limits as shown on the attached survey scope map.**
- 3. Locate planimetric data for above ground features, accessible piping networks, roads, buildings, structures.**
- 4. Topographic mapping and digital terrain model of the site suitable to produce a one foot contour.**
- 5. Aerial photography and photogrammetry to produce DTM and 3 cm GSD orthoimagery.**
- 6. Contact NC One Call and request utility locations for the project area.**
- 7. Locate utilities as marked.**
- 8. Establish property boundaries and ROW lines for project area as shown on survey scope map.**



9. Plat of survey will NOT be produced.

#### **Schematic Design**

1. Attend one kickoff meeting with Moseley and the Owner to initiate communications, define schedules, discuss approvals, gather initial data and information, and to fully determine the technical requirements for the project.
2. Provide up to two conceptual site layouts for the Owner's consideration. Layouts to include detention center expansion location, parking lots and driveways, and stormwater control measure location. Meet with Moseley and Owner to review and select preferred layout.
3. Proceed with development of initial site and utility drawings, and development of a preliminary grading model. Site the stormwater control measure with preliminary sizing.
4. Attend a Haywood County Board of Commissioners meeting to assist Moseley with presentation of Schematic Design results and request for authorization to proceed with Design Development Phase.

#### **Design Development**

1. Update Site and Utility Plans per Owner comments received during Schematic Design review.
2. Further refine the proposed grading plan to establish finish grades across the site.
3. Refine the stormwater management model and provide finish grades and outlet structure sizing for updated site layout.
4. Prepare a drainage plan and calculations to convey stormwater.
5. Add vertical data and further refine water and sewer service lines/utility plan.
6. Attend two coordination meetings with Moseley and Owner to review Design Development drawings.
7. Attend a Davie County Board of Commissioners meeting to assist Moseley with presentation of Design Development results.

#### **Construction Document Development Phase**

1. Update Site, Utility, Grading, Drainage and Stormwater Management Plans per Owner comments received during Design Development review.
2. Prepare an erosion control plan with calculations per requirements of NCDEQ.

3. Prepare a landscape plan that complies with requirements of Town of Waynesville. This task assumes no irrigation system will be provided. Landscaping beyond these minimum requirements is at Owner's discretion.
4. Prepare project specifications for the construction of the civil/site items detailed in the plans.
5. Perform the following permitting tasks:
  - a. Prepare applications and submittal documents to the following authorities:
    - i. NCDEQ-DEMLR for erosion control plan approval.
    - ii. Town of Waynesville for zoning, site and stormwater plan approval.
  - b. Coordinate fee payments by Owner for applications.
  - c. Respond to comments received from the regulatory agencies listed above and re-submit plans as necessary to pursue final approval. The fees below assume two rounds of review per reviewer. Additional rounds of review are considered additional services.
6. Once all regulatory approvals have been received, issue civil/site plans for bid (100% of Construction Document Development Phase).

#### **Bid and Award Assistance**

McGill will provide construction documents to Moseley including plans and specifications for inclusion in Moseley's pricing package. McGill staff will be available to provide assistance and answer questions from the contractors and subcontractors during the bid process, but costs for soliciting bids have not been included in this proposal. Our services for this phase of the project include:

1. Provide Moseley one pdf set of drawings and specifications for the purposes of soliciting bids.
2. Assist Moseley in addressing civil related questions from contractors and subcontractors during the bidding process.
3. Assist Moseley and Owner in evaluation of pricing received from contractors and subcontractors.
4. Attend one (1) meeting with Moseley and the Owner to review pricing and negotiate work and prices as necessary to bring the project within agreed upon budget.

#### **Construction and Post Construction Phases**

This phase includes construction administration and observation services associated with the proposed site work. McGill's proposed services include:

1. Attend one (1) pre-construction meeting with Moseley; Owner; and selected site contractor(s) and subcontractors; and all applicable parties.



2. Review shop drawings provided by the site contractor(s) and subcontractor(s) for civil/site work items. Provide comments to Moseley as to whether the materials proposed in the shop drawings comply with the project specifications.
3. Attend construction progress meetings with Moseley; Owner; and selected site contractor(s) and subcontractors to review progress of the civil /site construction. This proposal is based on attending one meeting per month during active civil construction and as needed to observe construction and testing of facilities requiring Engineer's Certifications. We have based our proposal on an estimated 12-month civil construction that parallels construction of the detention center expansion. We assume regular monthly progress meetings will be held immediately before or immediately after progress meetings on the detention center site. (12 monthly meetings estimated). Additional meetings in excess of this amount will be considered additional services.
4. Review and provide comments on any change orders requested by the site contractor(s) and subcontractors for civil/site related items.
5. Upon completion of construction, perform a final site visit of the civil/site work with Moseley; Owner; and selected site contractor(s) and subcontractors and generate a written punch list of outstanding items that need to be addressed prior to project completion.
6. Upon completion of construction, generate record drawings for the utility services and stormwater control measures and submit the record drawings to the appropriate agencies. As-built survey data to be provided by a licensed surveyor. Survey not included with this proposal.
7. Generate and submit final engineering certifications associated with the utility extensions and stormwater control measures in accordance with current laws and regulations.

**BASIS OF COMPENSATION**

Based on our understanding of the project scope, McGill anticipates providing the above Basic Services for the following fees. All fees shall be considered lump sum fees.

Phase	Proposed Fee
Preliminary Stream / Wetland Delineation	
Topographic Survey	
Schematic Design	
Design Development	
Construction Documents Development	
Bid and Award Assistance	
Construction and Post Construction Phases	
Total Fee	

Payment of permit application fees are not included in the above fees.

### ADDITIONAL SERVICES

Please note that the above fees do not include 401/404 permitting associated with wetland or stream impacts, construction phase geotechnical and material testing services; easement documents; structural, mechanical, electrical (including street and parking lot lighting) or CATV design; or application or approval fees, which should be paid directly by the Owner. Changes to the proposed site plan layout or facilities, which occur after each phase's approval by the County Board of Commissioners, will be considered additional services.

In addition, if any of the following services are required, they can be charged as Additional Services in accordance with the attached Basic Fee Schedule or for a lump sum fee as may be separately agreed upon.

- a. In-person coordination meetings with Owner, Moseley, or other design professionals above the number indicated in the Basic Services.
- b. Design changes initiated by other design professionals that cause resubmittal of civil/site plans to regulatory reviewers.
- c. Preparation of submittals to regulatory authorities, other than those listed under Basic Services, and revision of plans per their comments.
- d. Preparation of extension drawings or drawings for upgrades to existing water and sewer infrastructure to serve the proposed facility, along with permitting with NCDEQ is not included in the above scope of services.
- e. Providing services to verify the accuracy of drawings or other information furnished by the Owner or others.
- f. Revising drawings or other documents when such revisions are inconsistent with approvals or instruction previously given by the Moseley or are due to causes beyond the control of McGill Associates.
- g. Providing services of professional consultants for items of work other than those outlined under Basic Services.
- h. Providing professional services made necessary by default of a contractor or subcontractor in the performance of the Construction Contract.
- i. Preparing to serve and/or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, other than as specified in the Basic Services above.
- j. Building code review submittals (assumed to be executed by Moseley).
- k. Preparing/coordinating natural gas, telephone, telecommunications, electrical, or TV cable plans.
- l. Providing any other services not included in this Agreement or not customarily furnished in accordance with the generally accepted Engineering practice.
- m. Securing off-site easements or the preparation of easement mapping.
- n. Design of off-site waste/borrow areas if needed.
- o. Design of off-site potable water lines, fire lines, or wastewater collection lines and pump stations to serve the site other than those described under the Basic Services.
- p. Design of off-site roadway improvements other than those described under the Basic Services



- q. Traffic control studies, traffic impact analysis, or traffic signal design. Design of underground or above ground fuel tanks

Dan, we appreciate the opportunity to provide this proposal to you for this important project. If the above is acceptable to you, please prepare the appropriate AIA contract and forward copies for our execution. If you have any questions concerning this proposal or any element of our work, please do not hesitate to contact me at 828-252-0575.

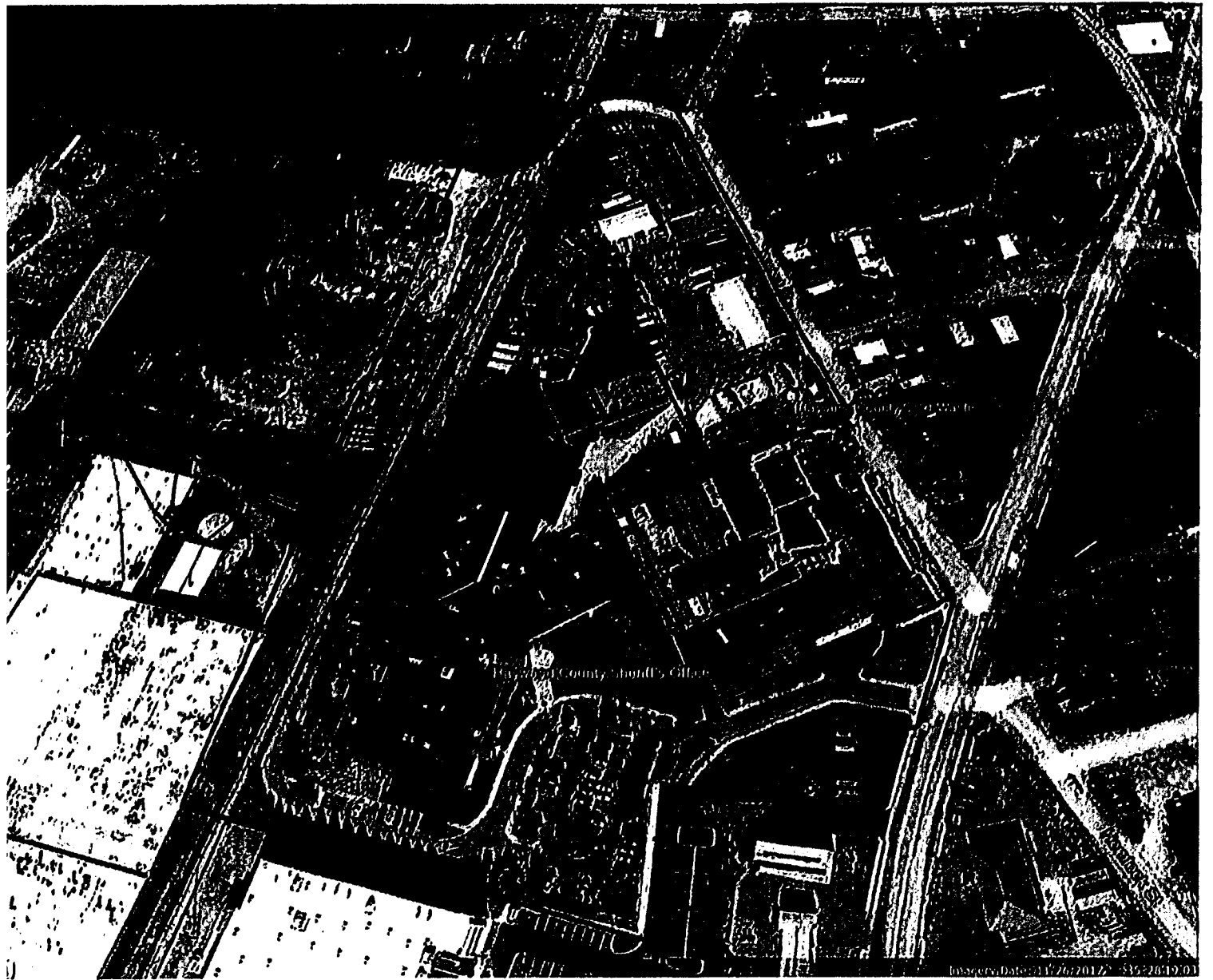
Sincerely,  
McGILL ASSOCIATES, P.A.

A handwritten signature in black ink, appearing to read 'S. Burwell', written in a cursive style.

SCOTT BURWELL, PE  
Senior Project Manager

Attachments: Survey Scope Map  
Basic Fee Schedule

P:\2021\21.00104-MoseleyArc-Haywood Co Detention Ctr Expa\Admin\Contracts\21-0502-Moseley Arch Haywood County Detention Center Proposal.docx



Wayne County, North Carolina

Image Date: 11/26/2012 3:35:28 PM

Exhibit C Survey, Wetland Delineation, and Site Civil Engineering Scope – McGill Proposal dated May 2, 2022.

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

  
OWNER (Signature)

Bryant Morehead, County Manager  
County of Haywood, North Carolina  
*(Printed name and title)*

  
ARCHITECT (Signature)

Daniel R. Mace, AIA, Vice President  
Moseley Architects P.C.  
*(Printed name, title, and license number, if required)*

Int.

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User Notes: (389ADA3E)

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