



## MEMO

### County Administrator

Robert W. Wilson  
701-241-5770  
wilsonro@casscountynynd.gov

TO: County Commissioners  
FROM: Robert W. Wilson  
DATE: September 28, 2022  
SUBJECT: Klein McCarthy Agreement – Jail Housing Addition Design

---

---

At the meeting on Wednesday, October 5<sup>th</sup> the Board will consider approving the attached agreement with Klein McCarthy Architects for design services on the jail housing addition.

This agreement has been reviewed by the Administration, State's Attorney and Finance Offices. The general terms include a fee of 6.5% of construction cost for design and construction administration of the project. The agreement is written in standard AIA form.

Mr. Burdick and I have had several email conversations with Klein McCarthy about the structure of the agreement, including preferred methods of dispute resolution should the need arise – arriving quickly at a mutual agreement. (Mediation would be the first option if needed.)

This contract anticipates a design, bid, build delivery method. Mr. Scott Fettig from Klein McCarthy has indicated that if the County were interested in an alternate delivery method such as Construction Manager-at-Risk, this agreement could be amended to meet that need. If the County wishes to consider CM at-Risk, that determination should be made quickly as Klein McCarthy is proposing an aggressive design schedule that will allow for bidding this spring.

**SUGGESTED MOTION: Authorize the Chair to sign agreement with Klein McCarthy Architects for Jail Housing Addition Design and Construction Administration for the Jail Facility.**

PO Box 2806  
211 Ninth Street South  
Fargo, North Dakota 58108

[www.casscountynynd.gov](http://www.casscountynynd.gov)

# DRAFT AIA® Document B103™ – 2017

## Standard Form of Agreement Between Owner and Architect for a Complex Project

**AGREEMENT** made as of the **Third (3<sup>rd</sup>)** day of **October** in the year **Two Thousand Twenty-Two (2022)**.

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

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

Cass County  
211 South 9<sup>th</sup> Street  
Fargo, ND 58103  
Telephone: (701) 241-5770  
Facsimile: (701) 297-5776

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

Klein McCarthy & Co., Ltd. dba Klein McCarthy Architects  
6465 Wayzata Boulevard  
Suite 410  
St. Louis Park, MN 55426  
Telephone: (952) 908-9990  
Facsimile: (952) 908-9991  
Email: scott.fettig@kleinmccarthy.com

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

Jail Housing Addition Design and Construction Administration for the Jail Facility located at 450 34<sup>th</sup> Street South in Fargo, North Dakota.

The Project Scope includes additions to the Jail facility including approximately 48,829-54,404 GSF for a 96-cell Housing addition with supporting functions including Counseling Rooms, Recreation and Garage, approximately 2,900 GSF for Medical, and approximately 1,440 GSF for Property Storage.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

## TABLE OF ARTICLES

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

### ARTICLE 1 INITIAL INFORMATION

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

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

§ 1.1.1 The Owner's program for the Project:

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

The Architect shall base the design on Owner selected Option #2 or Option #4 in the Klein McCarthy Architects Population Forecast and Design Options for the Jail, dated July 8, 2022, attached as Exhibit 'C'.

§ 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.)*

The Project includes one-story and the two-story additions and remodeling for connections. The Housing and Support to be located to the east and the south of the Jail, the Medical Area to the east of the Jail and the Property expansion to be located to the south of the existing Property area.

The additions to be based upon Options #2 or #4 per Exhibit 'C' and the same or complimentary exterior material characteristics as the existing Jail facility.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

To be determined later by mutual agreement but based on the estimate provided by Construction Engineers, Inc. in Exhibit 'C'.

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

- .1 Design phase milestone dates, if any:

Construction Documents completed in one bid package with the three (3) Prime bids to be issued for bidding by the end of March 2023.

- .2 Construction commencement date:

April 2023 – February 2025.

- .3 Substantial Completion date or dates:

March 2025.

- .4 Other milestone dates:

Facility occupancy April 2025.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract.)

Competitive bid via three (3) Prime bidder process; General Construction, Mechanical and Electrical bid packages.

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:  
(List number and type of bid/procurement packages.)

Multiple bid packages as identified in Article 1.1.5 and issued on the same date.

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

None.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:  
(List name, address, and other contact information.)

Robert Wilson, County Administrator  
Cass County  
P.O. Box 2806  
Fargo, ND 58108-2806  
Telephone: (701) 241-5770  
Facsimile: (701) 297-5776  
Email: wilsonro@casscountynd.gov

§ 1.1.9 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.)

County Building Committee

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



*(List name, legal status, address, and other contact information.)*

**.1 Cost Consultant:**

To be determined.

**.2 Scheduling Consultant:**

To be determined.

**.3 Geotechnical Engineer:**

To be determined.

**.4 Civil Engineer:**

Included in Supplemental Services.

**.5 Land Survey Services:**

*(List any other consultants and contractors retained by the Owner.)*

To be determined.

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

Scott W. Fettig  
Klein McCarthy Architects  
6465 Wayzata Boulevard, Suite 410  
St. Louis Park, MN 55426  
Direct: (952) 908-9995  
Telephone: (952) 908-9990  
Facsimile: (952) 908-9991  
Cell: (612) 759-0859  
Email: scott.fettig@kleinmccarthy.com

**§ 1.1.12** The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:  
*(List name, legal status, address, and other contact information.)*

**§ 1.1.12.1** Consultants retained under Basic Services:

**.1 Structural Engineer:**

Paulson & Clark Engineering, Inc.  
2352 East County Road J  
White Bear Lake, MN 55110  
Telephone: (651) 4074-6056

**.2 Mechanical Engineer:**

Prairie Engineering, P.C.  
619 Riverwood Drive  
Bismarck, ND 58504  
Telephone: (701) 258-3493

**.3 Electrical Engineer:**

Prairie Engineering, P.C.  
619 Riverwood Drive  
Bismarck, ND 58504  
Telephone: (701) 258-3493

**§ 1.1.12.2 Consultants retained under Supplemental Services:**

**.1 Security Electronics:**

Prairie Engineering, P.C.  
619 Riverwood Drive  
Bismarck, ND 58504  
Telephone: (701) 258-3493

**.2 Telecommunications / Data:**

Prairie Engineering, P.C.  
619 Riverwood Drive  
Bismarck, ND 58504  
Telephone: (701) 258-3493

**.3 Civil Engineer:**

Houston Engineering  
1401 21<sup>st</sup> Avenue North  
Fargo, ND 58102  
Telephone: (701) 237-5065

**§ 1.1.13 Other Initial Information on which the Agreement is based:**

None

**§ 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 Klein McCarthy Architects, Agreement for Transfer of Files on Electronic Media 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 Klein McCarthy Architects, Agreement for Transfer of Files on Electronic Media Exhibit, 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. The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.

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

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

§ 2.5 The Architect shall maintain the following insurance 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 Point Five Million Dollars (\$1,500,000.00) for each occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Point Five Million Dollars (\$ 1,500,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than 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 Two Million Dollars (\$ 2,000,000.00) per claim and Four Million Dollars (\$ 4,000,000.00) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** If requested by the Owner, 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.

§ 2.6 The Architect agrees that during the performance of this Agreement, no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, creed or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any applicable federal and state laws against discrimination.

## **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

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

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

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Owner and the Scheduling Consultant's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the 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 and Scheduling Consultant, 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. The Architect shall not be responsible for delays caused by factors beyond the Architect's reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics), failure of any governmental or other regulatory authority to act in a timely manner, failure of the Owner to furnish timely information or approve or disapprove of the Architect's services or work product, or delays caused by performance by the Owner or by contractors of any level. When such delays beyond the Architect's reasonable control occur, the Owner agrees that the Architect shall not be responsible for damages, nor shall the Architect be deemed in default of this Agreement.

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

§ 3.1.5 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval. The Owner shall defend, indemnify, and hold the Architect harmless from any claims or demands arising out of the acceptance of nonconforming Work or a directive or substitution made against the Architect's advice.

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

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

### **§ 3.2 Schematic Design Phase Services**

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

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

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

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

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

§ 3.2.5.1 The Architect shall discuss with the Owner sustainable design alternatives, such as material choices, 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 the Schematic Design Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Cost Consultant's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4 and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

### § 3.3 Design Development Phase Services

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

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

### § 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.

## **§ 3.5 Procurement Phase Services**

### **§ 3.5.1 General**

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

### **§ 3.5.2 Competitive Bidding**

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

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

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

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

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

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

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

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

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

## **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and recommend the amounts due the Contractor and shall issue certificates in such amounts. The Architect's review (on AIA Document G702 form) for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the uncovered 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 recommendation as to Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site observations to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

### **§ 3.6.4 Submittals**

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

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

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

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

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

### **§ 3.6.5 Changes in the Work**

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

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

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct site visits for observable defects and deficiencies in the Work 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 site visit 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 site visits 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</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	not provided
§ 4.1.1.2 Multiple preliminary designs	not provided
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	not provided
§ 4.1.1.5 Site evaluation and planning	not provided
§ 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	Architect
§ 4.1.1.9 Landscape design	not provided
§ 4.1.1.10 Architectural interior design	Architect
§ 4.1.1.11 Value analysis	not provided
§ 4.1.1.12 Cost estimating	Owner
§ 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	not provided
§ 4.1.1.17 Post-occupancy evaluation	Architect
§ 4.1.1.18 Facility support services	not provided

<b>Supplemental Services</b>	<b>Responsibility</b> <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.19 Tenant-related services	not provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	not provided
§ 4.1.1.21 Telecommunications/data design	Architect
§ 4.1.1.22 Security evaluation and planning	not provided
§ 4.1.1.23 Commissioning	not provided
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	not provided
§ 4.1.1.25 Historic preservation	not provided
§ 4.1.1.26 Furniture, furnishings, and equipment design	Owner
§ 4.1.1.27 Other services provided by specialty Consultants	not provided
§ 4.1.1.28 Other Supplemental Services	not provided

**§ 4.1.2 Description of Supplemental Services**

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

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

§ 4.1.1.3 Measured Drawings: Utilize County provided drawings for the existing building. KMA will verify key dimensions and provide backgrounds in CADD or Revit to record approximate locations of existing conditions.

§ 4.1.1.6 Building Information Model Management responsibilities: Information modeling to be performed in Revit and managed as a cloud-based solution.

§ 4.1.1.8 Civil Engineering: Provide usual and customary civil engineering design services for the building expansion.

§ 4.1.1.10 Architectural Interior Design: Will assist Owner in choosing interior finishes to be placed in the Drawings and Specifications.

§ 4.1.1.16 As-Constructed record Drawings: General Contractor will provide record drawings to be incorporated along with Design Team known items.

§ 4.1.1.17 Post Occupancy Evaluation: Review project to conduct an 11-month warranty walk-through with the Owner. See Section 3.6.6.5.

§ 4.1.1.20 Architect's coordination with Owner consultants as required, done through the Owners representative.

§ 4.1.1.21 Telecommunications/data design includes usual and customary telecommunications/data design services. Procurement and selection of telecommunications/data end-user devices or equipment is not included in the scope of work.

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

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

§ 4.1.2.12 Cost Estimating: Cost estimating to be provided by County provided estimator or Construction Manager.

## § 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, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

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

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

- .1 **Two** (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Up to Forty-Eight (48) visits to the site by the Architect during construction
- .3 **One** (1) inspection for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 **One** (1) inspection 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.

§ 5.2 The Owner shall furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 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. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. 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.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs. Furthermore, if the Owner elects to utilize the fast track basis, the Owner acknowledges that there is a greater likelihood of errors, omissions, inconsistencies, ambiguities and lack of coordination in design and other work product produced by the Architect and its consultants which could result in additional design and construction costs, the occurrence of which is inherent in the fast track approach and for which neither the Architect nor its consultants may be held legally responsible.

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

§ 5.5 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.

§ 5.6 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.

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

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

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

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

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

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

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

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

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

## **ARTICLE 6 COST OF THE WORK**

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost or Guaranteed Maximum Price (GMP) 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 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.



§ 6.3 The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6. If the Architect is required to make revisions to the Contract Documents, the Architect shall be entitled to compensation, as an Additional Services for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate

contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service (including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of 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 defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations.

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

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien

arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

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

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

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

### **§ 8.3 Arbitration**

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

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

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

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



#### **§ 8.3.4 Consolidation or Joinder**

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

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

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

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

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

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

##### **.1 Termination Fee:**

An agreed upon amount of the Architect's anticipated profit on the value of the services not performed by the Architect.

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

The Owner and Architect will agree to a fixed lump sum based upon the percentage of the project completed at that time.

**§ 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 and Section 9.7.

**ARTICLE 10 MISCELLANEOUS PROVISIONS**

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

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

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment. The Architect shall not, in connection with any such assignment by the Owner, be required to execute any documents that in any way might, in the sole judgment of the Architect, increase the Architect's contractual or legal obligations or risks, or the availability of or costs of its professional or general liability insurance.

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

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

**§ 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

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

survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

§ 10.8.1 The receiving party may disclose “confidential” or “business proprietary” information after 7 days’ notice to the other party, when required by law, arbitrator’s order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Architect or Owner from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Architect or Owner to defend itself from any suit or claim.

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

## ARTICLE 11 COMPENSATION

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

- .1 Percentage Basis  
(Insert percentage value)

Six point five (6.5) % of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 11.6, plus reimbursable expenses.

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

Compensation included in Percentage Basis based on Article 11.1.2.

§ 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.)

Compensation for an agreed upon service shall be a negotiated lump sum fee or shall be based on published hourly rates of the firm(s) staff requested plus associated reimbursable expenses. See Exhibit ‘A’ – Hourly Rates, attached.

<< >>

§ 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 **Fifteen** percent (15%), or as follows:  
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

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

Schematic Design Phase	Twenty-Five	percent (	25	%)
Design Development Phase	Twenty-Five	percent (	25	%)
Construction Documents Phase	Twenty-Five	percent (	25	%)
Procurement Phase	Two	percent (	2	%)
Construction Phase	Twenty-Three	percent (	23	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

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

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

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See Exhibit 'A' – Hourly Rates, attached.

### § 11.8 Compensation for Reimbursable Expenses

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

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

- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **Ten** percent (10 %) of the expenses incurred.

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

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

Not applicable.

### § 11.10 Payments to the Architect

#### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of **Zero** (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

#### § 11.10.2 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-One** (31) 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.)*

**1.5 %** monthly or legal prevailing rate per annum.

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

§ 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 Dispute Resolution

§ 12.1.1 Dispute Resolution: Any claims, disputes, or other matters in question between the parties to this Agreement, arising of or relating to this Agreement, shall first be resolved between the parties.

### § 12.2 Contingency

§ 12.2.1 Contingency: The Architect makes no warranties, express or implied, that its design is free of errors or omissions. The Owner and Architect agree that certain increased costs and changes may be required and are anticipated due to omissions, errors or inconsistencies in the Architect's drawings and specifications. Therefore, the Owner agrees to set aside a reserve in the amount of five percent (5%) of the estimated cost of construction ("contingency amount"). The Owner agrees to make no claim against the Architect or its consultants in connection with any increased cost within this contingency amount. If costs due to changes resulting from design errors, omissions or inconsistencies exceed the contingency amount, then the Architect shall be responsible for premium costs incurred by the Owner above that sum, but only to the extent caused by the Architect's negligent acts, errors or omissions. In no event shall the Architect be responsible for direct costs that the Owner would have incurred in the

construction contract regardless of the Architect's error or omission, nor shall the Architect be responsible for any costs that constitute betterment or upgrades to the Project.

### § 12.3 Limitation of Liability

§ 12.3.1 To the fullest extent permitted by law, the total liability, in the aggregate, of Architect and Architect's officers, directors, employees, agents, and consultants to Owner and anyone claiming by, through or under Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Architect's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Architect under this Agreement.

## 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 B103™-2017, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below, if completed, or the following:  
*(Insert the date of the E203-2013 incorporated into this agreement.)*

**Klein McCarthy Architects, Agreement for Transfer of Files on Electronic Media**

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

Klein McCarthy Architects, Agreement for Transfer of Files on Electronic Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this agreement.)*

October 3, 2022

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

Exhibit 'A' – Hourly Rates dated October 3, 2022.

Exhibit 'B' – Reimbursable Expenses dated October 3, 2022.

Exhibit 'C' – Population Forecast and Design Options for the Jail, dated July 8, 2022.

- .4 Other documents:

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

**Certificates of Insurance – Auto, General Commercial, Errors & Omissions and Umbrella Liability**

**Hanover Auto Broadening AI form 461-0155**

**Hanover Form 391-1006 AI Form**

**Certificate of Insurance – Worker Compensation**

**Certificate of Liability Insurance - Blanket Additional Insured**

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**ARCHITECT** *(Signature)*

\_\_\_\_\_  
Scott W. Fetting, President

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*





# Agreement for Transfer of Files on Electronic Media

---

**AGREEMENT** made as of October 3, 2022

**BETWEEN** the Architect:

Klein McCarthy Architects  
6465 Wayzata Boulevard  
Suite 410  
St. Louis Park, MN 55426

And the "Receiving Party":

Cass County  
Cass County Government Center  
211 South 9<sup>th</sup> Street  
Fargo, ND 58108-2806

For the following project:

Cass County Jail Housing Addition Design and Construction Administration  
Architect's Project Number 220400

## TERMS AND CONDITIONS

1. The purpose of this Agreement is to grant license from the Architect to the Receiving Party for the use of the Architect's electronic media.
2. This Agreement does not create any other contractual relationship between the Architect and the Receiving Party.
3. Architect makes no representation as to the compatibility of the files with Receiving Party's hardware or software.
4. Since the information set forth on the files can be modified unintentionally or otherwise, the Architect reserves the right to remove indicia of its ownership and/or involvement from each electronic display. This media should not be considered a certified document.
5. Information on the files is considered instruments of service of the Architect and shall not be used for other projects, for additions to this project, or completion of this project by others. Files shall remain the property of the Architect and / or their consultants, and in no case shall the transfer of these files be considered a sale.
6. Architect makes no representation regarding the accuracy, completeness, or permanence of files, nor for their merchantability or fitness for a particular purpose. Addenda information or revisions made after the date indicated on the files may not have been incorporated. In the event of a conflict between the signed and sealed Contract Drawings and files, the sealed Contract Drawings shall govern. It is the Receiving Party's responsibility to determine if any conflicts exist. The files shall not be considered to be Contract Documents as defined by the General Conditions of the Contract for Construction.
7. The use of files prepared by the Architect shall not in any way obviate the Receiving Party's responsibility for the proper checking and coordination of dimensions, details, member sizes and gage, and quantities of materials as required to facilitate complete and accurate fabrication and erection.
8. The Receiving Party shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the Architect, and its sub-consultants from all claims, damages, losses, expenses, penalties and liabilities of any kind, including attorney's fees, arising out of or resulting from the use of the files by the Receiving Party, or by third party recipients of the files from the Receiving Party.



# Agreement for Transfer of Files on Electronic Media

---

9. The Architect believes that no licensing or copyright fees are due to others on account of the transfer of the files, but to the extent any are, the Receiving Party will pay the appropriate fees and hold the Architect harmless from such claims.
10. This Agreement shall be governed by the laws of the principal place of business of the Architect.

## ELECTRONIC MEDIA

The Architect will provide the following files at the request of the Receiving Party. Files are developed to the level of detail as agreed upon by the Owner and Architect.

<u>File Name</u>	<u>Discipline</u>	<u>Software Version</u>
File Name Here	XXXX	XXXX
File Name Here	XXXX	XXXX

## AUTHORIZED ACCEPTANCE

by Architect

by Receiving Party

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Scott W. Fettig  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

October 3, 2022  
Date

\_\_\_\_\_  
Date



**Cass County Jail Addition**  
**EXHIBIT "A"**  
**HOURLY RATES**  
**October 3, 2022**

CEO/President – <a href="#">Scott Fettig</a>	\$ 225/hour
Principal Architect	\$ 200/hour
Director of Design	\$ 180/hour
Senior Project Manager – <a href="#">Scott Fettig, Danielle Reid</a>	\$ 180/hour
Senior Project Architect	\$ 150/hour
Senior Project Designer	\$ 130/hour
Project Coordinator/Job Captain	\$ 120/hour
Project Manager – <a href="#">Ryan Weber/Erik Daniels</a>	\$ 160/hour
Project Designer	\$ 120/hour
BIM 360 Manager – <a href="#">Mike Matheny</a>	\$ 140/hour
Project Architect/Architect 3 – <a href="#">Dave Allen/Tony Rauch</a>	\$ 130/hour
Design Staff 3	\$ 115/hour
Architect 2	\$ 110/hour
Architectural Staff 2	\$ 105/hour
Document Coordinator	\$ 105/hour
Project Captain – <a href="#">TruBIM (David Rother)</a>	\$ 105/hour
Architect 1	\$ 100/hour
Technical Coordinator	\$ 100/hour
Architectural Staff 1 – <a href="#">Austin Rudin, Zane Gayle</a>	\$ 95/hour
Business/Administration Manager – <a href="#">Liz Olszewski</a>	\$ 90/hour
Intern 3	\$ 85/hour
Intern 2	\$ 75/hour
Intern 1	\$ 65/hour
Student Intern ( <a href="#">TrueBIM – Carson Meyer</a> )	\$ 50/hour

(Note: This schedule is subject to annual adjustments by KMA.)



**Cass County Jail Addition**  
**EXHIBIT "B"**  
**REIMBURSABLE EXPENSES**  
**October 3, 2022**

All reimbursable expenses will be billed as specified below plus a 10% mark-up.

- In-House Reproduction:

-- Black & White Copies	8-1/2 x 11	\$ 0.15
-- Black & White Copies	11 x 17	0.30
-- Black & White Copies	12 x 18	1.00
-- Color Copy	8-1/2 x 11	1.00
-- Color Copy	11 x 17	2.00
-- Color Copy	12 x 18	2.00
-- Black & White Prints	15 x 21	1.00
-- Black & White Prints	24 x 36	2.00
-- Black & White Prints	30 x 42	3.00
-- Scanned Images	15 x 21	1.00
-- Scanned Images	24 x 36	1.50
-- Scanned Images	30 x 42	2.00
  
- Miscellaneous Expenses:

-- Mileage	\$.58/mile
-- Teleconferences	cost
-- Long Distance Calls/Faxes	cost
-- Courier, UPS, FedEx, postage	cost
-- Outsourced reproduction services	cost
-- Consultants' expenses	cost
-- Lodging	cost
-- Meals	cost
-- Fees/Permits	cost
-- Airfare	cost
-- Transportation (bus, taxi, shuttle)	cost

(Note: This schedule is subject to annual adjustments by KMA.)



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

08/26/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Insurance Brokers of MN, Inc. 13654 Van Buren St NE Suite 300 Ham Lake MN 55304	<b>CONTACT NAME:</b> Shawn Nistler <b>PHONE (A/C, No, Ext):</b> (763) 784-0143 <b>E-MAIL ADDRESS:</b> s.nistler@insurancebrokersmn.com	<b>FAX (A/C, No):</b> (763) 219-4681
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> KLEIN MCCARTHY & CO LTD 6465 WAYZATA BLVD SUITE 410 ST. LOUIS PARK MN 55426	<b>INSURER A:</b> Citizens Insurance Company of America NAIC # 31534	
	<b>INSURER B:</b> Allmerica Financial Benefit 41840	
	<b>INSURER C:</b> Beazley Insurance Company	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**

CERTIFICATE NUMBER: 2022-2023

REVISION NUMBER:

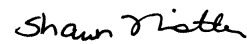
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		OBXH529072	03/01/2022	03/01/2023	EACH OCCURRENCE \$ 2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 3000,000
							MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 2,000,000
							GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
							Employee Benefits \$ 1,000,000
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y		AWXH529074	03/01/2022	03/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							Underinsured motorist \$ 1,000,000
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			OBXH529072	03/01/2022	03/01/2023	COMBINED SINGLE LIMIT EACH OCCURRENCE \$ 5,000,000
							AGGREGATE \$ 5,000,000
							\$
							PER STATUTE OTH-ER
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / N <b>(Mandatory in NH)</b> If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
C	Errors & Omissions retroactive date: full prior to Deductible 25,000			V1F480200401	08/01/2021	08/01/2022	Occurance 2,000,000 Aggregate 4,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ARCHITECTS. Certificate Holder is listed as Additional Insured on the General Liability and Auto when required by contract using Hanover(Citizens) forms 391-1006 and 461-0155.

**CERTIFICATE HOLDER****CANCELLATION**

Cass County 211 9th Street South PO Box 2806 Fargo ND 58108-2806	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
---------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

© 1988-2015 ACORD CORPORATION. All rights reserved.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO COVERAGE BROADENING ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

#### **1. CANCELLATION EXTENSION**

Paragraph **A. CANCELLATION 2. b.** of the **COMMON POLICY CONDITIONS** is replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

- d. Any business entity for which you have a financial interest greater than 50% of the voting stock or otherwise have a controlling interest after the effective date of this policy or that is newly acquired or formed by you during the term of this policy.

#### **SECTION I - COVERED AUTOS**

##### **2. EMPLOYEE HIRED "AUTOS"**

**Description Of Covered Auto Designation Symbols; Symbol 8** is replaced by the following:

8 = Hired "Autos" Only - Only those "autos" you lease, hire, rent or borrow; including "autos" your employee hires at your direction, for the purpose of conducting your business. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees" or partners or members of their households.

The coverage provided by this provision is afforded until expiration or termination of this policy, whichever occurs earlier.

The coverage provided by this provision does not apply to any business entity described in d. above that qualifies as an insured under any other automobile liability policy issued to that business entity as a named insured or would have been an insured except for the exhaustion of the policy limits or the insolvency of the insurer.

#### **SECTION II - LIABILITY COVERAGE**

##### **3. BROADENED NAMED INSURED**

The following is added to the **SECTION II - LIABILITY COVERAGE**, Paragraph 1. **Who Is An Insured** provision:

The coverage provided by this provision does not apply to "bodily injury" nor "property damage" arising from an accident that occurred prior to your acquiring or forming the business entity described in d. above.

#### 4. EMPLOYEES AS INSURED

The following is added to the **SECTION II - LIABILITY COVERAGE**, Paragraph 1. **Who Is An Insured** provision:

- e. Any employee of yours is an "insured" while using a covered "auto" you do not own, hire or borrow in your business or your personal affairs.

#### 5. SUPPLEMENTARY PAYMENTS

The following amends **SECTION II - LIABILITY COVERAGE**, Paragraph 2. **Coverage Extensions** provision:

Paragraph (2) is replaced by the following:

- (2) Up to \$2500 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

Paragraph (4) is replaced by the following:

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

#### 6. AMENDED FELLOW EMPLOYEE EXCLUSION

The following is added to the **SECTION II - LIABILITY COVERAGE**, B. **Exclusions** Paragraph 5. **Fellow Employee** exclusion:

This exclusion does not apply if the "bodily injury" arises from the use of a covered "auto" you own or hire. This coverage is excess over any other collectible insurance

#### SECTION III - PHYSICAL DAMAGE COVERAGE.

#### 7. EXPENSE OF RETURNING A STOLEN "AUTO" and SIGN COVERAGE

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A.1. COVERAGE**:

##### d. Expense Of Returning A Stolen "Auto"

We will pay for the expense of returning a covered "auto" to you.

##### e. Sign Coverage

We will pay for loss to signs, murals, paintings or graphics, as part of equipment, which are displayed on a covered "auto".

The most we will pay for "loss" in any one "accident" is the lesser of:

1. The actual cash value of the property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
3. \$2,000.

#### 8. GLASS BREAKAGE DEDUCTIBLE

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE** paragraph 3. **Glass Breakage - Hitting a Bird or Animal - Falling Objects or Missiles**:

Any deductible shown in the Declarations as applicable to the

Includes copyrighted material of Insurance Services Office, Inc. with its permission.

Copyright, Insurance Services Office, Inc., 1996

covered "auto" will not apply to glass breakage if such glass is repaired, rather than replaced.

#### 9. **TRANSPORTATION EXPENSE**

Paragraph 4. **Coverage Extension**. of **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE** is replaced with the following:

##### 4. **Coverage Extension**

We will pay up to \$50 per day to a maximum of \$1500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

#### 10. **HIRED AUTO PHYSICAL DAMAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**:

##### 5. **Hired Auto Physical Damage**

If hired "autos" are covered "autos" for Liability Coverage and if Physical Damage Coverage of Comprehensive, Specified Causes of Loss, or Collision is provided under this Coverage Form for any "auto" you own, then the Physical Damage Coverage(s) provided is extended to "autos" you hire without a driver or your employee hires, without a driver, at your

direction, for the purpose of conducting your business, for a period of 30 days or less, of like kind and use as the "autos" you own, subject to the following:

The most we will pay for any one loss is the lesser of the following:

- a. \$50,000 per accident, or
- b. cash value, or
- c. the cost of repair,

minus the deductible equal to the lowest deductible applicable to any owned "auto" for that coverage. Any deductible shown in the Declarations does not apply to "loss" caused by fire or lightning. Subject to the limit and deductible stated above, we will provide coverage equal to the broadest coverage provided to any covered "auto" you own, that is applicable to the loss.

If the loss arises from an accident for which you are legally liable and the lessor incurs an actual financial loss from that accident, we will cover the lessor's actual financial loss of use of the hired "auto" for a period of up to seven consecutive days from the date of the accident, subject to a limit of \$1,000 per accident.

#### 11. **AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE**:

##### 6. **Audio, Visual and Data Electronic Equipment Coverage**

We will pay for "loss" to any electronic equipment that receives

Includes copyrighted material of Insurance Services Office, Inc. with its permission.

Copyright, Insurance Services Office, Inc., 1996

or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound. This coverage applies only if the equipment is permanently installed in the covered "auto" at the time of the "loss" or the equipment is removable from a housing unit which is permanently installed in the covered auto at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto s" electrical system, in or upon the covered "auto", including its antennas and other accessories. However , this does not include tapes, records or discs.

The exclusions that apply to PHYSICAL DAMAGE COVERAGE, except for the exclusion relating to Audio, Visual and Data Electronic Equipment, also apply to coverage provided herein. In addition, the following exclusions apply:

We will not pay , under this coverage, for either any electronic equipment or accessories used with such electronic equipment that is:

1. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto s" operating system; or
2. Both:
  - a. An integral part of the same unit housing any sound reproducing equipment designed solely for the reproduction of sound if the sound reproducing

equipment is permanently installed in the covered "auto", and

- b. Permanently installed in the opening of the dash or console normally used by the manufacturer for the installation of a radio.

With respect to coverage herein, the **LIMIT OF INSURANCE** provision of **PHYSICAL DAMAGE COVERAGE** is replaced by the following:

1. The most we will pay for all "loss" to audio, visual or data electronic equipment and any accessories used with this equipment as a result of any one "accident" is the lesser of
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality; or
  - c. \$500.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value at the time of the "loss".
3. Deductibles applicable to PHYSICAL DAMAGE COVERAGE, do not apply to this Audio, Visual and Data Electronic Equipment Coverage.

If there is other coverage provided by this policy for audio, visual and data electronic equipment, the coverage provided herein is



excess. However, you may elect to apply the limit or any portion thereof of coverage provided herein to pay any deductible that is applicable under the provisions of the other coverage.

covered"auto". If loss is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and transport it to a repair shop.

## 12. RENTAL REIMBURSEMENT and MATERIAL TRANSFER EXPENSE

2. 60 days.

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, A. COVERAGE:**

Our payment is limited to the lesser of the following amounts:

### 7. Rental Reimbursement and Material Transfer Expense

1. Necessary and actual expenses incurred, including loss of use.

This coverage provides only those Physical Damage Coverages where a premium is shown in the Declarations. It applies only to a covered "auto" described or designated to which the Physical Damage Coverages apply.

2. \$3000.

We will pay for auto rental expenses and the expenses, incurred by you because of "loss" to a covered "auto", to remove and transfer your materials and equipment from the covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.

This auto rental expense coverage does not apply while there are spare or reserve "autos" available to you for your operations.

We will pay only for those auto rental expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy s expiration, with the lesser of the following number of days:

If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the SECTION III - PHYSICAL DAMAGE COVERAGE, A. 4. Coverage Extension.

1. The number of days reasonably required to repair or replace the

## 13. AIRBAG COVERAGE

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions**, paragraph 3.

The portion of this exclusion relating to mechanical or electrical breakdown does not apply to the accidental discharge of an airbag. This coverage is excess of other collectible insurance or warranty. No deductible applies to this Airbag Coverage.

**14. AUTO LOAN PHYSICAL DAMAGE EXTENSION**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance** provision:

When a "loss" results in a total loss to a covered auto you own for which a Loss Payee is designated in this policy, the most we will pay for "loss" in any one "accident" is the greater of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The outstanding balance of the initial loan, less any amounts for taxes, overdue payments, overdue payment charges, penalties, interest, any charges for early termination of the loan, costs for Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan, and carry-over balances from previous loans.

**15. AUTO LEASE PHYSICAL DAMAGE EXTENSION**

The following is added to **SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limit Of Insurance** provision:

If, because of damage, destruction or theft of a covered "auto", which is a long-term leased "auto", the lease agreement between you and the lessor is terminated, "we" will pay the difference between the amount paid under paragraph **C. LIMIT OF INSURANCE 1. or 2.** and the amount due at the time of "loss" under the terms of the lease agreement applicable to the leased "auto" which you are required to pay: less any fees to dispose of the auto; any overdue payments; financial penalties

imposed under a lease for excessive use, abnormal wear and tear or high mileage; security deposits not refunded by the lessor; cost for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan; and carry over balances from previous leases.

This coverage applies only to the initial lease for the covered "auto" which has not previously been leased. This coverage is excess over all other collectible insurance.

**SECTION IV - CONDITIONS**

**16. DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS**

The following is added to **SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions, 2. Duties In The Event Of Accident, Claim, Suit Or Loss:**

- d. Knowledge of any "accident", claim, "suit" or "loss" will be deemed knowledge by you when notice of such "accident", claim, "suit" or "loss" has been received by:
  - (1) You, if you are an individual;
  - (2) Any partner or insurance manager if you are a partnership; or
  - (3) An executive officer or insurance manager if you are a corporation.

**17. BLANKET WAIVER OF SUBROGATION**

Paragraph **5. Transfer Of Rights Of Recovery Against Others To Us, SECTION IV - BUSINESS AUTO CONDITIONS, A. Loss Conditions** is replaced by the following:

Includes copyrighted material of Insurance Services Office, Inc. with its permission.  
Copyright, Insurance Services Office, Inc., 1996

**5. Transfer Of Rights Of Recovery  
Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, which have not been waived through the execution of an "insured contract", written agreement, or permit, prior to the "accident" or "loss" giving rise to the payment, those rights to recover damages from another are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after the "accident" or "loss" to impair them.

**18. UNINTENTIONAL FAILURE TO  
DISCLOSE INFORMATION**

The following is added to **SECTION IV BUSINESS AUTO CONDITIONS. B. General Conditions**, paragraph 2. **Concealment, Misrepresentation Or Fraud:**

Your unintentional error in disclosing, or failure to disclose, any material fact existing after the effective date of this Coverage Form shall not prejudice your rights under this Coverage Form. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or nonrenewal.

**19. HIRED AUTO - WORLDWIDE  
COVERAGE**

The following is added to **SECTION IV - Business Auto Conditions, B. General Conditions**, paragraph 7. **Policy Period, Coverage Territory** provision:

- e. Outside the coverage territory described in a., b., c., and d. above for an "accident" or "loss" resulting from the use of a covered "auto" you hire, without a driver, or your employee hires without a driver, at your direction, for the purpose of conducting your business, for a period of 30 days or less, provided the suit is brought within The United States of America or its territories or possessions.

**SECTION V - DEFINITIONS**

**20. MENTAL ANGUISH**

Paragraph C. "**Bodily injury**", **SECTION V - DEFINITIONS** is replaced by the following:

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death or mental anguish resulting from any of these.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUSINESSOWNERS LIABILITY SPECIAL BROADENING ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SUMMARY OF COVERAGES	Limits	Page
1. Additional Insured by Contract, Agreement or Permit	Included	1
2. Additional Insured - Broad Form Vendors	Included	2
3. Alienated Premises	Included	3
4. Broad Form Property Damage - Borrowed Equipment, Customers Goods and Use of Elevators	Included	3
5. Incidental Malpractice (Employed Nurses, EMT's and Paramedics)	Included	3
6. Personal and Advertising Injury - Broad Form	Included	4
7. Product Recall Expense	Included	4
Product Recall Expense Each Occurrence Limit	\$25,000 Occurrence	5
Product Recall Expense Aggregate Limit	\$50,000 Aggregate	5
Product Recall Deductible	\$500	5
8. Unintentional Failure to Disclose Hazards	Included	6
9. Unintentional Failure to Notify	Included	6

This endorsement amends coverages provided under the Businessowners Coverage Form through new coverages and broader coverage grants. This coverage is subject to the provisions applicable to the Businessowners Coverage Form, except as provided below.

The following changes are made to **SECTION II - LIABILITY**:

**1. Additional Insured by Contract, Agreement or Permit**

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**:

**Additional Insured by Contract, Agreement or Permit**

- a. Any person or organization with whom you agreed in a written contract, written agreement or permit to add such person or organization as an additional insured on your policy is an additional insured only with respect to liability for "bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by your acts or omissions, or the acts or omissions of those acting on your behalf, but only with respect to:

- (1) "Your work" for the additional insured(s) designated in the contract, agreement or permit;

- (2) Premises you own, rent, lease or occupy; or

- (3) Your maintenance, operation or use of equipment leased to you.

- b. The insurance afforded to such additional insured described above:

- (1) Only applies to the extent permitted by law; and

- (2) Will not be broader than the insurance which you are required by the contract, agreement or permit to provide for such additional insured.

- (3) Applies on a primary basis if that is required by the written contract, written agreement or permit.

- (4) Will not be broader than coverage provided to any other insured.

- (5) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto.

- c. This provision does not apply:
- (1) Unless the written contract or written agreement was executed or permit was issued prior to the "bodily injury", "property damage", or "personal injury and advertising injury".
  - (2) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
  - (3) To any lessor of equipment:
    - (a) After the equipment lease expires; or
    - (b) If the "bodily injury", "property damage", "personal and advertising injury" arises out of sole negligence of the lessor.
  - (4) To any:
    - (a) Owners or other interests from whom land has been leased if the "occurrence" takes place or the offense is committed after the lease for the land expires; or
    - (b) Managers or lessors of premises if:
      - (i) The "occurrence" takes place or the offense is committed after you cease to be a tenant in that premises; or
      - (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.
  - (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" or the offense which caused the "personal and advertising injury" involved the rendering of or failure to render any professional services by or for you.

- d. With respect to the insurance afforded to these additional insureds, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance**:

The most we will pay on behalf of the additional insured for a covered claim is the lesser of the amount of insurance:

1. Required by the contract, agreement or permit described in Paragraph a.; or
2. Available under the applicable Limits of Insurance shown in the Declarations.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

- e. All other insuring agreements, exclusions, and conditions of the policy apply.

**2. Additional Insured - Broad Form Vendors**

The following is added to **SECTION II - LIABILITY, C. Who Is An Insured:**

**Additional Insured - Broad Form Vendors**

- a. Any person or organization that is a vendor with whom you agreed in a written contract or written agreement to include as an additional insured under this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business.
- b. The insurance afforded to such vendor described above:
  - (1) Only applies to the extent permitted by law;
  - (2) Will not be broader than the insurance which you are required by the contract or agreement to provide for such vendor;
  - (3) Will not be broader than coverage provided to any other insured; and
  - (4) Does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is otherwise excluded from coverage under this Coverage Part, including any endorsements thereto
- c. With respect to insurance afforded to such vendors, the following additional exclusions apply:
 

The insurance afforded to the vendor does not apply to:

  - (1) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reasons of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement;
  - (2) Any express warranty unauthorized by you;

- (3) Any physical or chemical change in the product made intentionally by the vendor;
- (4) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instruction from the manufacturer, and then repackaged in the original container;
- (5) Any failure to make such inspection, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product;
- (6) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- (7) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor;
- (8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
- (a) The exceptions contained within the exclusion in subparagraphs (4) or (6) above; or
- (b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- (9) "Bodily injury" or "property damage" arising out of an "occurrence" that took place before you have signed the contract or agreement with the vendor.
- (10) To any person or organization included as an insured by another endorsement issued by us and made part of this Coverage Part.
- (11) Any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
- d. With respect to the insurance afforded to these vendors, the following is added to **SECTION II - LIABILITY, D. Liability and Medical Expense Limits of Insurance:**
- The most we will pay on behalf of the vendor for a covered claim is the lesser of the amount of insurance:
1. Required by the contract or agreement described in Paragraph a.; or
  2. Available under the applicable Limits of Insurance shown in the Declarations;
- This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
- 3. Alienated Premises**
- SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage k. Damage to Property,** paragraph (2) is replaced by the following:
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises and occurred from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.
- 4. Broad Form Property Damage - Borrowed Equipment, Customers Goods, Use of Elevators**
- a. The following is added to **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage, k. Damage to Property:**
- Paragraph (4) does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations.
- Paragraph (3), (4) and (6) do not apply to "property damage" to "customers goods" while on your premises nor to the use of elevators.
- b. For the purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**
1. "Customers goods" means property of your customer on your premises for the purpose of being:
    - a. Worked on; or
    - b. Used in your manufacturing process.
  - c. The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured whether primary, excess, contingent or on any other basis.
- 5. Incidental Malpractice - Employed Nurses, EMT's and Paramedics**
- SECTION II - LIABILITY, C. Who Is An Insured,** paragraph 2.a.(1)(d) does not apply to a nurse,

emergency medical technician or paramedic employed by you if you are not engaged in the business or occupation of providing medical, paramedical, surgical, dental, x-ray or nursing services.

#### 6. Personal Injury - Broad Form

a. **SECTION II - LIABILITY, B. Exclusions, 2. Additional Exclusions Applicable only to "Personal and Advertising Injury"**, paragraph e. is deleted.

b. **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, 14.** "Personal and advertising injury", paragraph b. is replaced by the following:

b. Malicious prosecution or abuse of process.

c. The following is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions, Definition 14.** "Personal and advertising injury":

"Discrimination" (unless insurance thereof is prohibited by law) that results in injury to the feelings or reputation of a natural person, but only if such "discrimination" is:

(1) Not done intentionally by or at the direction of:

(a) The insured;

(b) Any officer of the corporation, director, stockholder, partner or member of the insured; and

(2) Not directly or indirectly related to an "employee", not to the employment, prospective employment or termination of any person or persons by an insured.

d. For purposes of this endorsement, the following definition is added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Discrimination" means the unlawful treatment of individuals based upon race, color, ethnic origin, gender, religion, age, or sexual preference. "Discrimination" does not include the unlawful treatment of individuals based upon developmental, physical, cognitive, mental, sensory or emotional impairment or any combination of these.

e. This coverage does not apply if liability coverage for "personal and advertising injury" is excluded either by the provisions of the Coverage Form or any endorsement thereto.

#### 7. Product Recall Expense

a. **SECTION II - LIABILITY, B. Exclusions, 1. Applicable To Business Liability Coverage,**

**o. Recall of Products, Work or Impaired Property** is replaced by the following:

**o. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

If such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it, but this exclusion does not apply to "product recall expenses" that you incur for the "covered recall" of "your product".

However, the exception to the exclusion does not apply to "product recall expenses" resulting from:

(4) Failure of any products to accomplish their intended purpose;

(5) Breach of warranties of fitness, quality, durability or performance;

(6) Loss of customer approval, or any cost incurred to regain customer approval;

(7) Redistribution or replacement of "your product" which has been recalled by like products or substitutes;

(8) Caprice or whim of the insured;

(9) A condition likely to cause loss of which any insured knew or had reason to know at the inception of this insurance;

(10) Asbestos, including loss, damage or clean up resulting from asbestos or asbestos containing materials; or

(11) Recall of "your products" that have no known or suspected defect solely because a known or suspected defect in another of "your products" has been found.

b. The following is added to **SECTION II - LIABILITY, C. Who Is An Insured**, paragraph 3.b.:

"Product recall expense" arising out of any withdrawal or recall that occurred before you acquired or formed the organization.



- c. The following is added to **SECTION II - LIABILITY, D. Liability and Medical Expenses Limits of Insurance:**

**Product Recall Expense Limits of Insurance**

- a. The Limits of Insurance shown in the SUMMARY OF COVERAGES of this endorsement and the rules stated below fix the most that we will pay under this Product Recall Expense Coverage regardless of the number of:

- (1) Insureds;
- (2) "Covered Recalls" initiated; or
- (3) Number of "your products" withdrawn.

- b. The Product Recall Expense Aggregate Limit is the most that we will reimburse you for the sum of all "product recall expenses" incurred for all "covered recalls" initiated during the policy period.

- c. The Product Recall Each Occurrence Limit is the most we will pay in connection with any one defect or deficiency.

- d. All "product recall expenses" in connection with substantially the same general harmful condition will be deemed to arise out of the same defect or deficiency and considered one "occurrence".

- e. Any amount reimbursed for "product recall expenses" in connection with any one "occurrence" will reduce the amount of the Product Recall Expense Aggregate Limit available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

- f. If the Product Recall Expense Aggregate Limit has been reduced by reimbursement of "product recall expenses" to an amount that is less than the Product Recall Expense Each Occurrence Limit, the remaining Aggregate Limit is the most that will be available for reimbursement of "product recall expenses" in connection with any other defect or deficiency.

**g. Product Recall Deductible**

We will only pay for the amount of "product recall expenses" which are in excess of the \$500 Product Recall Deductible. The Product Recall Deductible applies separately to each "covered recall". The limits of insurance will not be reduced by the amount of this deductible.

We may, or will if required by law, pay all or any part of any deductible amount, if applicable. Upon notice of our payment

of a deductible amount, you shall promptly reimburse us for the part of the deductible amount we paid.

The Product Recall Expense Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

- d. The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expense General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**

You must see to it that the following are done in the event of an actual or anticipated "covered recall" that may result in "product recall expense":

- (1) Give us prompt notice of any discovery or notification that "your product" must be withdrawn or recalled. Include a description of "your product" and the reason for the withdrawal or recall;

- (2) Cease any further release, shipment, consignment or any other method of distribution of like or similar products until it has been determined that all such products are free from defects that could be a cause of loss under this insurance.

- e. For the purpose of this endorsement, the following definitions are added to **SECTION II - LIABILITY, F. Liability and Medical Expenses Definitions:**

1. "Covered recall" means a recall made necessary because you or a government body has determined that a known or suspected defect, deficiency, inadequacy, or dangerous condition in "your product" has resulted or will result in "bodily injury" or "property damage".

2. "Product recall expense(s)" means:

- a. Necessary and reasonable expenses for:

- (1) Communications, including radio or television announcements or printed advertisements including stationary, envelopes and postage;

- (2) Shipping the recalled products from any purchaser, distributor or user to the place or places designated by you;
  - (3) Remuneration paid to your regular "employees" for necessary overtime;
  - (4) Hiring additional persons, other than your regular "employees";
  - (5) Expenses incurred by "employees" including transportation and accommodations;
  - (6) Expenses to rent additional warehouse or storage space;
  - (7) Disposal of "your product", but only to the extent that specific methods of destruction other than those employed for trash discarding or disposal are required to avoid "bodily injury" or "property damage" as a result of such disposal,  
you incur exclusively for the purpose of recalling "your product"; and
- b. Your lost profit resulting from such "covered recall".
- f. This Product Recall Expense Coverage does not apply:
- (1) If the "products - completed operations hazard" is excluded from coverage under this Coverage Part including any endorsement thereto; or
  - (2) To "product recall expense" arising out of any of "your products" that are otherwise excluded from coverage under this Coverage Part including endorsements thereto.
- 8. Unintentional Failure to Disclose Hazards**  
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions:**  
**Representations**  
We will not disclaim coverage under this Coverage Part if you fail to disclose all hazards existing as of the inception date of the policy provided such failure is not intentional.
- 9. Unintentional Failure to Notify**  
The following is added to **SECTION II - LIABILITY, E. Liability and Medical Expenses General Conditions, 2. Duties in the Event of Occurrence, Offense, Claim or Suit:**  
Your rights afforded under this Coverage Part shall not be prejudiced if you fail to give us notice of an "occurrence", offense, claim or "suit", solely due to your reasonable and documented belief that the "bodily injury", "property damage" or "personal and advertising injury" is not covered under this Policy.

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

Acct#: 1175910

8/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Lockton Companies, LLC 3657 Briarpark Dr., Suite 700 Houston, TX 77042	<b>CONTACT NAME:</b> 888-828-8365 <b>PHONE (A/C. No. Ext):</b> <b>E-MAIL ADDRESS:</b>	<b>FAX (A/C. No):</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Indemnity Insurance Co. of North America	<b>NAIC #</b> 43575
<b>INSURED</b> KLEIN MCCARTHY & CO. LTD. ARCHITECTS 6465 WAYZATA BLVD STE 410 SAINT LOUIS PARK, MN 55426-1721	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	C70050894	10/1/2021	10/1/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

CASS COUNTY  
 211 SOUTH 9TH STREET  
 FARGO, ND 58103

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. The following is added to WHO IS AN INSURED (Section II):**

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

**INSURANCE (Section III)** for this Coverage Part.

**B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

**C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):**

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

## COMMERICAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

**D.** The following definition is added to **DEFINITIONS (Section V)**:

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.