City of Carroll

112 E. 5th Street Carroll, Iowa 51401-2799 (712) 792-1000 FAX: (712) 792-0139

MEMO TO: Honorable Mayor and City Council Members

FROM: Mike Pogge-Weaver, City Manager MPW

DATE: December 14, 2017

SUBJECT: Library/City Hall Project

- Review answers to questions related to project cost and architectural service based on the November 27, 2017 City Council meeting
- Review an update from the Carroll Public Library Foundation
- Review an updated current preliminary cost model for the City Hall/Library project
- Consider a resolution to approve a B101- 2007 Standard Form of Agreement Between Owner and Architect with OPN Architects for construction at the City of Carroll Library located at 112 E. 5th St. Carroll, IA 51401
- Consider a resolution to approve a B101- 2007 Standard Form of Agreement Between Owner and Architect with OPN Architects for construction at the City of Carroll City Hall located at 627 N. Adams St. Carroll, IA 51401
- Consider approval of a lease with R & R Rental, Inc. for space at 112 E 5th St in Carroll (City Hall)
- Consider approval of a lease with Badding Construction Company for space at 425 Highway 30 W, Suite 340 in Carroll (Library)

The Library/City Hall project was discussed at the November 27, 2017 City Council meeting. Ultimately the Council tabled consideration so additional information could be obtained. To address the questions that were raised the following items are attached to this memo:

- A handout with answers to questions related to overall project cost and architectural service from the November 27, 2017 City Council meeting.
- A letter from the Carroll Public Library Foundation that outlines their cash on hand for this project, total pledges, and timeline that pledges will be fulfilled.
- An updated preliminary cost model for the City Hall/Library project that shows the project's total range.

Contract and Fee Proposal with OPN Architects

With the ability to rent temporary space during building construction, the proposed contract and fee proposal from OPN Architects is based on simultaneously completing work for both the Library and City Hall. The anticipated start time for the projects would be August 2018. The following is an outline of fees from the contract:

	Library	**City Hall**	**Total**
Design Phase	$289,746	$128,650	**$418,396**
Programing Review	$9,800	$3,200	**$13,000**
Construction Phase	$108,288	$53,482	**$161,770**
Reimbursable	$5,500-$6,500	$4,000-$5,000	**$9,500-$11,500**
Total	**$413,334 - $414,334**	**$189,332 - $190,332**	**$602,666 - $604,666**

The range of $602,666 - $604,666 is the total fees that will be paid to OPN Architects and their sub-consultants. If the Council finds these fees acceptable and approves constructing the project simultaneously, then they are asked to approve the contract and fee proposals. Attached to this memo are two contracts (AIA B101- 2007 Standard Form of Agreement Between Owner and Architect) for the project. The first is for the work at the Library and the second is for the City Hall. The contracts have been reviewed and approved to form by City Attorney Bruner.

Temporary Leases

Based on the recommendation of the Library/City Hall Steering Committee, staff has negotiated leases with R & R Rental for property at 515 N Carroll St (part of the former DOT licensing station) for City Hall and Badding Construction for property at 425 Highway 30 W (part of the former Wal-Mart site, west side of the building adjacent to Serendipity Studio) for the Carroll Public Library. The following outlines the size and rent costs of the two sites:

City Hall Lease	**Total Sq Ft**	**12-month lease cost**	**Cost/Sq Ft**	**If needed, additional monthly lease cost**
515 N Carroll St **Owner: R&R Rental**	3,722 sq ft	$36,260.00	$9.74	$2,559.67
City would be responsible for electrical, gas, water, sewer, and trash. Included in the rent is property taxes, building insurance, and common area maintenance which includes snow removal, lawn care, maintenance of parking lot, sidewalk, exterior building façade, roof, and mechanical equipment.				

Library Lease	**Total Sq Ft**	**18-month lease cost**	**Cost/Sq Ft**	**If needed, additional monthly lease cost**
425 Highway 30 W **Badding Construction**	8,401 sq ft	$85,050.00	$6.75	$4,725.00
City would be responsible for electrical, gas, and trash. Included in the rent is property taxes, building insurance, water/sewer usage and common area maintenance which includes snow removal, lawn care, maintenance of parking lot, sidewalk, exterior building façade, roof, and mechanical equipment.				

Attached you will find copies of the proposed leases. The leases have been reviewed and approved to form by City Attorney Bruner.

Current preliminary cost model from OPN Architects

Based on direction of City Staff, OPN Architects provided a preliminary cost model for the November 27th meeting that showed what represented the high end of the expected costs for the project. Based on feedback at that meeting, OPN has submitted a revised preliminary cost model showing the overall project range like they have in the past.

This preliminary cost model assumes that construction will be completed simultaneously for both the Library and City Hall. The overall cost model shows the total construction cost at $5,192,526; which still includes the higher 15% Design/Bid/Construction Contingency. This amount is what would be expected to be paid to a contractor at this point in time in the design process. As design work progresses, the total construction cost will continue to be refined, especially related to the final project contingency amount.

The overall project cost with professional fees, furnishings, and miscellaneous costs is currently projected to be between $6,546,551 and $6,807,124. Work by city staff is still needed to secure a quote to move City Hall.

Update from the Carroll Public Library Foundation

Included with this memo is an update from the Carroll Public Library Foundation. The letter includes the total cash on hand for the project, total pledges, and timeline that pledges will be fulfilled. Council should review and discuss the attached letter.

RECOMMENDATION: Mayor and City Council is asked to take the following actions for the Library/City Hall project:

1. Consider a resolution to approve a B101- 2007 Standard Form of Agreement Between Owner and Architect with OPN Architects for construction at the City of Carroll Library located at 112 E. 5th St. Carroll, IA 51401
2. Consider a resolution to approve a B101- 2007 Standard Form of Agreement Between Owner and Architect with OPN Architects for construction at the City of Carroll City Hall located at 627 N Adams St Carroll, IA 51401
3. Consider approval of a lease with R & R Rental, Inc. for space at 112 East 5th St in Carroll (City Hall)
4. Consider approval of a lease with Badding Construction Company for space at 425 Highway 30 W, Suite 340 in Carroll (Library)

Answers to questions related to project cost and architectural services from the November 27, 2017 meeting. Developed by City Staff in consultation with OPN Architects.

Q: In December of 2016, the plan was to complete work at the CSB site for City Hall, have City Hall move, then complete work on the Library. Why not stick to the original plan for completing work on the Bank first and then complete the work for the Library after City Hall moves?

A: The scope of the feasibility study asked to consider both buildings independently. At that time, options around move phasing or temporary space were unknown. This was something that the City Staff brought as an option for OPN to comment on after completion of the scope of the feasibility study. After reviewing this option, it appears to be viable and offers possible flexibility for schedule and cost.

Q: What additional costs could the City expect to incur by moving from a separate construction projects to a simultaneous construction project? Why would the City move to a one phase project if it will cost us money?

A: Areas of cost that the City would incur centers around temporary lease space and some additional moving costs. That said, the potential to save money due to estimated escalation for the library project should it remain in two phases, along with some value that the contractor may see in full site access, not only offset the cost of temporary space, but could save money overall. Running these projects concurrent also allows joint evaluation of budgets throughout design and bidding phases, where staggered projects removes this opportunity.

The September 6, 2017 memo for the RFP to lease building(s) for the Library/City Hall Project stated: "Since OPN included inflationary cost increases for the Library renovations the idea would be that the savings from moving the project up could be used to pay for leased space(s) in the community." During the discussion on the RFP on September 11, 2017 Mike Pogge-Weaver stated "just the inflationary increase was about a hundred to a hundred fifty thousand." The following summarizes the expected moving cost, lease costs, and reduced escalation cost when comparing separate construction to simultaneous construction.

	Separate Construction	Simultaneous Construction
Temporary Lease Space	$ 0	$ 121,310
Reduce Escalation on Library 4%	$ 0	($ 146,543)
Moving Cost 2 moves for Library	$ 0	$ 44,625
Rearranging Library during phased cons't	$ 30,000 (est.)	$ 0
City Hall Move(s)	$ 12,500 (est.)	$ 25,000 (est.)
Total Cost	$ 42,500	$ 44,392

Q: Why is an optional programming review being considered? Was that not completed with the Final Renderings and Floor Plan that were approved by the City Council on May 22nd? Doesn't the open concept provide the flexibility needed into the future making the program review pointless?

A: Programming was not included as part of the original feasibility study scope for either the Library or City Hall. To complete the concept phase as directed, OPN evaluated prior program documents that had been completed and had a single meeting to review the original program

done by Himmel Wilson in 2014. OPN offered comments and review of that program at that point in time. A full program review would provide specific input on space use and requirements for both projects. While an open concept does provide flexibility for the future, it does not address specific space needs or specifics of collections (e.g. linear footage required of cabinetry, shelving, etc. in city hall offices or library staff/collection spaces).

Additionally, the contract approved by the City Council on March 13 for the floor plan and renderings stated that it was for referendum assistance. The intent of the floor plan and renderings was to assist with the referendum and not for final design purposes. This is similar to other capital projects in Iowa that are subject to public referendums.

If a programing review is not completed, City Staff will be expected to complete this work and provide direction to OPN Architects on final space requirements.

Q: Why was a preliminary cost model that exceeded the City's established budget of $6.8 million?

A: OPN was asked to identify the "high" range of the cost due to the extremely early nature of this concept costing and the many unknowns. No additional cost estimating has been completed since the original concept booklet in December of 2016. At that time, estimates listed $7.1M to $7.34M as the range. OPN then worked with the city to identify a list of additional potential areas to target for savings. No additional services were added to re-estimate the work since the original concept in late 2016. The $6.8M was, and still is, a target number identified; not anything that came directly from the cost estimate.

Q: Please explain why you still list a 15% contingency?

A: It is standard practice to hold a contingency of this value at this early point in ANY project. This is in place to protect the owner and the overall budget as more is learned about the work through further design and documentation. At the feasibility and concept stage, estimates are built from plans that are essentially area diagrams and only narrative descriptions for building systems such as MEPT. Existing buildings, in this case – two of them, inherently have unknowns to a higher degree than new construction might. As we work through the design process phases, this contingency value will be reduced at each costing benchmark (SD, DD and 50% CD) to reflect the more 'known' level of detail. Some level of contingency would need to remain in place going into construction as well.

Q: Please explain general requirements, contractor markup, and contingency. Who is paid these fees? Will OPN receive these fees? Why are they separate from the construction price?

A: The construction cost is simply the sum total of the individual cost of the work by each of the sub-contractors. This estimate was built by the estimating consultant in much the same manner as a general contractor would approach this, by including overall mark-up and fees paid to the general contractor at the bottom, rather than built into each line item throughout the estimate. These dollars are part of the bid you would eventually see from your general contractor, and cover the contractor's time to coordinate the sub-contractors, mobilize the site, maintain schedule, etc. No part of any of these values goes to the design team.

Carroll Public Library Foundation
118 East 5th St
Carroll, IA 51041

December 13, 2017

Mayor Dr. Eric Jensen
Members of the Carroll City Council
112 East Fifth Street
Carroll, IA 51401

Honorable Mayor and City Council:

As of December 13, 2017, the Carroll Public Library Foundation has pledges totaling $1,398,425.41. That includes $778,800.41 in cash on hand for the project and $619,625 in pledges to be fulfilled.

Of the pledges that need to be filled, the scheduled collection is heavily front-loaded as follows:

2017: $50,000
2018: $288,125
2019: $125,250
2020: $81,750
2021: $64,000
2022: $10,500

Since our last letter, dated November 22, the Foundation raised $50,000 in additional funds, going from $1.348 to $1.398 million.

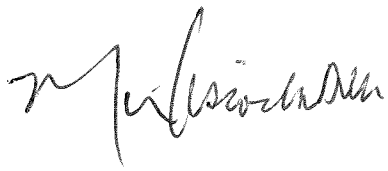
We have submitted, with the assistance of a professional grant writer, nine grant applications seeking a total of $1.3 million. We have had private and productive conversations with some of those philanthropic organizations. We are confident grant money will be a significant part of our fundraising mix. More grant applications will be made in coming months.

With the momentum we have demonstrated, the continued flow of money into our non-profit, and long-standing commitment of the foundation members, many of whom have attended dozens of council meetings and worked to improve our library for more than a decade, we believe we have earned the confidence of the community and its elected officials.

Our November 22 letter indicates our commitment to initial phases of the project. Please accept this letter as our commitment that we will pay all invoices related to Architectural Services and temporary lease payments when presented to us within five business days. If the Council needs or desires a more formal agreement, we are prepared to enter into such agreement. We believe this relationship of paying invoices when they are presented follows past practice of the City for other similar partnership projects.

We hope the council would afford the same trust and respect in our work and proven progress as it has in other organizations, past and present, seeking public-private partnerships with the city and its taxpayers to improve our communities with parks, a pool, and basketball courts, etc. We have been present and accountable as library advocates for more than 10 years, and we will work hard—in our volunteer capacities—to see this modern library through to completion. It's part of an exciting Fifth Street Alive corridor, that with the opening of Carroll Brewing Company and the expansion of Biokenimetrics, makes for a showcase section of Carroll, Iowa.

Sincerely,



Mitch Hiscocks
Foundation President

Carroll Public Library: Preliminary Cost Model
Monday, December 18, 2017

						Estimated Project Cost
1	New Construction - Building Cost					
	Bill Farner Building Renovation				=	$2,249,750
	Bill Farner Building Addition				=	$590,235
	CSB Building				=	$1,104,145
	Costruction Subtotal					**$3,944,130**
2	General requirements			6%	=	$236,648
3	Contractor Markup			8%	=	$334,462
4	Design/Bid/Construction Contingnency			15%	=	$677,286
	Construction Cost Estimate				=	**$5,192,526**
5	Professional Fee (Bldg & Site)	10.53%	$546,966	10.53%	=	$546,966
6	Cost Estimation Services	=	$33,200		=	$33,200
7	Programming ($9800 Lib + $3200 CH)	=	$13,000		=	$13,000
8	Reimbursables (estimated)	=	$11,500		=	$11,500
9	Furnishing/Shelving Range Library	13%	$369,198	14.4%	=	$408,958
10	Furnishing/Shelving Range City Hall	9%	$99,373	11%	=	$121,456
11	FFE Design/Spec Fee Range	9%	$42,171	9%	=	$47,737
12	Misc Costs:	5%	$259,626.30	8%		$415,402
	Soil Borings/topo boundary survey					
	Construction Testing					
	Computers/IT					
	AV systems					
	Interior Signage					
13	Temporary Lease space		$121,310			$121,310
14	Reduce escalation on Library 4-5%	-5%	-$186,945	-4%		-$149,556
	2019 $ to 2018 $ costs					
15	Moving cost - Library (includeds temp move and final)		$44,625			$44,625
16	Moving cost - City Hall		TBD			TBD
	Total Project Cost:		**$6,546,551**			**$6,807,124**

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Eighteenth day of December in the year Two thousand and seventeen
(In words, indicate day, month and year.)

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

City of Carroll
112 E. 5th Street
Carroll, IA 51401

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

OPN Architects, Inc.
100 Court Avenue, Suite 100
Des Moines, IA 50309

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

17842000 Carroll Public Library
112 E. 5th Street,
Carroll, IA 51401

REMIT ALL PAYMENTS TO:
OPN Architects Inc.
200 Fifth Avenue SE, Suite 201
Cedar Rapids, IA 52401

ATTN: Vickie Choate (vchoate@opnarchitects.com)
Becky Ulferts (bulferts@opnarchitects.com)

The Owner and Architect agree as follows.

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

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

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

See Exhibit 'A'

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

.1 Commencement of construction date:

August 23, 2018

.2 Substantial Completion date:

August 23, 2019

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Each Occurrence: $1,000,000 / Aggregate: $2,000,000

.2 Automobile Liability

Single Combined Limit: $1,000,000

.3 Workers' Compensation

Per Statute

.4 Professional Liability

Per Claim: $2,000,000
Per Aggregate: $2,000,000

.5 Excess / Umbrella Liability

Each Occurrence: $2,000,000 / Aggregate: $2,000,000

.6 Employers Liability

Per Accident, Per Disease, and Policy Limit: $500,000

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

§ 3.2.5 Based on the Owner's approval 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 modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

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

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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

§ 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 of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

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

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

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

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

.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

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.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
.3 organizing and conducting a pre-bid conference for prospective bidders;
.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

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

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by
.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
.2 organizing and participating in selection interviews with prospective contractors; and
.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall 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 4.3, 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 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

§ 3.6.4 SUBMITTALS

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods,

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techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

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ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.
(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	**Responsibility** *(Architect, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1 Programming (B202™–2009)	Not Provided-AddService	
§ 4.1.2 Multiple preliminary designs	Not Provided - Add Service	
§ 4.1.3 Measured drawings	Not Provided - Add Service	
§ 4.1.4 Existing facilities surveys	Not Provided - Add Service	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided - Add Service	
§ 4.1.6 Building Information Modeling (E203™–2008)	Not Provided	
§ 4.1.7 Civil engineering	Owner - Survey	
§ 4.1.8 Landscape design	Confluence	See Exhibit 'A'
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	See Exhibit 'A'
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Stecker-Harmsen	See Exhibit 'A'
§ 4.1.12 On-site Project Representation (B207™–2008)	Not Provided - Add Services	
§ 4.1.13 Conformed construction documents	Not Provided - Add Service	
§ 4.1.14 As-Designed Record drawings	Not Provided - Add Service	
§ 4.1.15 As-Constructed Record drawings	Not Provided - Add Service	
§ 4.1.16 Post occupancy evaluation	Not Provided - Add Service	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided - Add Service	
§ 4.1.18 Tenant-related services	Not Provided - Add Service	
§ 4.1.19 Coordination of Owner's consultants	Not Provided Add Service	
§ 4.1.20 Telecommunications/data design	Alvine Engineering	See Exhibit 'A'
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided - Add Service	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided - Add Service	
§ 4.1.23 Extensive environmentally responsible design	Not Provided - Add Service	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided - Add Service	
§ 4.1.25 Fast-track design services	Not Provided - Add Service	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided - Add Service	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided - Add Service	

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

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

- **.1** Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- **.2** Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- **.3** Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- **.4** Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- **.5** Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- **.6** Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- **.7** Preparation for, and attendance at, a public presentation, meeting or hearing;
- **.8** Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- **.9** Evaluation of the qualifications of bidders or persons providing proposals;
- **.10** Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- **.11** Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- **.1** Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- **.2** Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- **.3** 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;
- **.5** Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- **.6** To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

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

.2 Twenty-Six (26) visits to the site by the Architect over the duration of the Project during construction

.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Fifty-two (52) weeks of August 23, 2018, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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

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

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

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

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

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

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

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

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

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

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

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§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the

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contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.2 MEDIATION

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

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

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

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

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

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interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

(Design Phase) Schematic Design, Design Development and Construction Documents
Professional Fee $289,746

(Construction Phase) Bidding and Negotiations, Construction Administration
Professional Fee $108,288

Total Professional Fee $398,034
Reimbersable expenses are not included in the Professional Fees and will be invoiced at 1.1 times actual cost.

REMIT ALL PAYMENTS TO:
OPN Architects Inc.
200 Fifth Avenue SE, Suite 201
Cedar Rapids, IA 52401

ATTN: Vickie Choate (vchoate@opnarchitects.com)
Becky Ulferts (bulferts@opnarchitects.com)

§ 11.2 For Additional Services designated in Section 4.1, 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.)

Stipulated Sum per service or per Standard Hourly Rates

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Per Standard Hourly Rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

(Paragraph Deleted)

(Table Deleted)

(Paragraph Deleted)

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

See Exhibit 'B'

Employee or Category **Rate**

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

- **.1** Transportation and authorized out-of-town travel and subsistence;
- **.2** Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- **.3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, standard form documents;
- **.5** Postage, handling and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- **.8** Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- **.9** All taxes levied on professional services and on reimbursable expenses;
- **.10** Site office expenses; and
- **.11** Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorizaed travel, courier services, express mail, in house printing, mileage and meal reimbursements. Estimated Reimbursable expense of $5,500 - $6,500. Reimbursable expense not included would be plan review fees, permit fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE
If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Not Applicable

§ 11.10 PAYMENTS TO THE ARCHITECT
§ 11.10.1 An initial payment of Zero Dollars ($ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) 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

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

12.1 179D(d)(4) Energy Tax Allocation for Designers of Government-Owned Buildings. The Owner agrees to allocate to the Architect and the Architect's participating and responsible Consultants all section 179D tax deductions dedicated the Designers of energy efficient commercial property, provided these commercial property improvments qualify for allocations per the Energy Policy Act of 2005, Section 179D, Notice 2008-40. Upon achieving Substantial Completion for the Project, the Architect will prepare and submit the Form of Allocation letter to the Owner for approval on behalf of the design team and particpating Consultants. The Architect and Architect's participating Consultants will maintain records as are sufficient to establish the entitlement to, and amount of, any deduciton claimed by the Consultant relevant to 179D per IRS regulations.

Reference: As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code in order to encourage the energy efficient design and construction of new or rehabilitated properties. Notice 2008-40 of Internal Revenue Bulletin 2008-14 sets forth guidance as to the allocation of the section 179D deduciton to designers of government owned buildings. Notice 2008-40 provides that in the case of a government owned property (Federal, State or Local government or political subdivision) the deduction for energy efficient buildings may be allocated to the designer for the taxable year that includes the date on which the property was placed in service. These tax allocations are not possible to claim as a government entitiy and are therefore assigned to the responsible designer(s) of qualifying energy efficient property incorporated into the Project. A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specification for a new building or an addition to an existing building that incorporates energy efficient commercial property allowed under Section 179D.

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 Owner and Architect.

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

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

(Paragraph Deleted)

.3 Other documents:
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit 'A' - Proposal
Exhibit 'B' - Standard Hourly Rates

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

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OWNER	ARCHITECT
(Signature)	*(Signature)*
Eric Jensen, Mayor	Danielle C. Hermann, AIA, Associate Principal
(Printed name and title)	*(Printed name and title)*

Init.

/

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AIA® Document B101™ – 2007

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PAGE 1

AGREEMENT made as of the Eighteenth day of December in the year Two thousand and seventeen

...

City of Carroll
112 E. 5th Street
Carroll, IA 51401

...

OPN Architects, Inc.
100 Court Avenue, Suite 100
Des Moines, IA 50309

...

17842000 Carroll Public Library
112 E. 5th Street,
Carroll, IA 51401

...

REMIT ALL PAYMENTS TO:

...

OPN Architects Inc.

...

200 Fifth Avenue SE, Suite 201

...

Cedar Rapids, IA 52401

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...

ATTN: Vickie Choate (vchoate@opnarchitects.com)

...

Becky Ulferts (bulferts@opnarchitects.com)

PAGE 2

See Exhibit 'A'

...

August 23, 2018

...

August 23, 2019

PAGE 3

Each Occurrence: $1,000,000 / Aggregate: $2,000,000

...

Single Combined Limit: $1,000,000

...

Per Statute

...

Per Claim: $2,000,000

...

Per Aggregate: $2,000,000

...

.5 Excess / Umbrella Liability

...

Each Occurrence: $2,000,000 / Aggregate:

...

$2,000,000

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...

.6 Employers Liability

...

Per Accident, Per Disease, and Policy Limit: $500,000

PAGE 9

Additional Services	**Responsibility** *(Architect, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1 Programming (B202™–2009)	Not Provided-AddService	
§ 4.1.2 Multiple preliminary designs	Not Provided - Add Service	
§ 4.1.3 Measured drawings	Not Provided - Add Service	
§ 4.1.4 Existing facilities surveys	Not Provided - Add Service	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided - Add Service	
§ 4.1.6 Building Information Modeling (E203™–2008)	Not Provided	
§ 4.1.7 Civil engineering	Owner - Survey	
§ 4.1.8 Landscape design	Confluence	See Exhibit 'A'
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	See Exhibit 'A'
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided	
§ 4.1.11 Detailed cost estimating	Stecker-Harmsen	See Exhibit 'A'
§ 4.1.12 On-site Project Representation (B207™–2008)	Not Provided - Add Services	
§ 4.1.13 Conformed construction documents	Not Provided - Add Service	
§ 4.1.14 As-Designed Record drawings	Not Provided - Add Service	
§ 4.1.15 As-Constructed Record drawings	Not Provided - Add Service	
§ 4.1.16 Post occupancy evaluation	Not Provided - Add Service	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided - Add Service	
§ 4.1.18 Tenant-related services	Not Provided - Add Service	
§ 4.1.19 Coordination of Owner's consultants	Not Provided Add Service	
§ 4.1.20 Telecommunications/data design	Alvine Engineering	See Exhibit 'A'
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided - Add Service	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided - Add Service	
§ 4.1.23 Extensive environmentally responsible design	Not Provided - Add Service	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided - Add Service	
§ 4.1.25 Fast-track design services	Not Provided - Add Service	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Provided - Add Service	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided - Add Service	

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

PAGE 11

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

...

.2 Twenty-Six (26) visits to the site by the Architect over the duration of the Project during construction

...

.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

...

.4 One (1) inspections for any portion of the Work to determine final completion

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§ 4.3.4 If the services covered by this Agreement have not been completed within ~~( ) months of the date of this Agreement,~~ Fifty-two (52) weeks of August 23, 2018, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 14

[X] Litigation 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).~~

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...

~~§ 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.~~

PAGE 16

(Design Phase) Schematic Design, Design Development and Construction Documents
Professional Fee $289,746

(Construction Phase) Bidding and Negotiations, Construction Administration
Professional Fee $108,288

Total Professional Fee $398,034
Reimbersable expenses are not included in the Professional Fees and will be invoiced at 1.1 times actual cost.

...

REMIT ALL PAYMENTS TO:

...

OPN Architects Inc.

...

200 Fifth Avenue SE, Suite 201

...

Cedar Rapids, IA 52401

...

ATTN: Vickie Choate (vchoate@opnarchitects.com)

...

Becky Ulferts (bulferts@opnarchitects.com)

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...

Stipulated Sum per service or per Standard Hourly Rates

...

Per Standard Hourly Rates

...

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

...

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

...

~~Schematic Design Phase~~		~~percent (~~		~~%)~~
~~Design Development Phase~~		~~percent (~~		~~%)~~
~~Construction Documents Phase~~		~~percent (~~		~~%)~~
~~Bidding or Negotiation Phase~~		~~percent (~~		~~%)~~
~~Construction Phase~~		~~percent (~~		~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

...

~~**§ 11.6** When compensation is based on a percentage of the Cost of the Work 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, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

PAGE 17

See Exhibit 'B'

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants~~plus percent (%)~~. Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorizaed travel, courier services, express mail, in house printing, mileage and meal reimbursements. Estimated Reimbursable expense of $5,500 - $6,500.

...

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~~of the expenses incurred.~~Reimbursable expense not included would be plan review fees, permit fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

...

Not Applicable

...

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

...

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) 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.

...

1.5 % monthly

PAGE 18

12.1 179D(d)(4) Energy Tax Allocation for Designers of Government-Owned Buildings. The Owner agrees to allocate to the Architect and the Architect's participating and responsible Consultants all section 179D tax deductions dedicated the Designers of energy efficient commercial property, provided these commercial property improvments qualify for allocations per the Energy Policy Act of 2005, Section 179D, Notice 2008-40. Upon achieving Substantial Completion for the Project, the Architect will prepare and submit the Form of Allocation letter to the Owner for approval on behalf of the design team and particpating Consultants. The Architect and Architect's participating Consultants will maintain records as are sufficient to establish the entitlement to, and amount of, any deduciton claimed by the Consultant relevant to 179D per IRS regulations.

...

Reference: As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code in order to encourage the energy efficient design and construction of new or rehabilitated properties. Notice 2008-40 of Internal Revenue Bulletin 2008-14 sets forth guidance as to the allocation of the section 179D deduciton to designers of government owned buildings. Notice 2008-40 provides that in the case of a government owned property (Federal, State or Local government or political subdivision) the deduction for energy efficient buildings may be allocated to the designer for the taxable year that includes the date on which the property was placed in service. These tax allocations are not possible to claim as a government entitiy and are therefore assigned to the responsible designer(s) of qualifying energy efficient property incorporated into the Project. A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specification for a new building or an addition to an existing building that incorporates energy efficient commercial property allowed under Section 179D.

...

~~.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~

...

Exhibit 'A' - Proposal

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Exhibit 'B' - Standard Hourly Rates

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Eric Jensen, Mayor

Danielle C. Hermann, AIA, Associate Principal

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User Notes:

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:41:01 on 12/11/2017 under Order No. 4396204884 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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OPN ARCHITECTS

Daniel J. Thies, AIA
Steven K. Knierim, AIA
Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

December 18, 2017

Mr. Mike Pogge-Weaver
City Manager
City of Carroll
112 E. 5th Street
Carroll, IA 51401-2799

RE: Proposal for Phase II Services (Basic Services) for City of Carroll Library

Mike:

OPN could not be more excited to be a part of this project. Please find below the scope of services for the Library Project located at 112 E. 5th St. Carroll, IA 51401.

We have separated out the Library and the City Hall into two individual fee proposals. We have also divided up the fee for Design Phase services from Bidding and Construction Administration services. The follow is specific to the Library building only. A lum sum professional fee for the two design phases as indicated below.

Programming Review – Additional services if desired

This phase of the work is intended to review, analyze and confirm prior space needs work that was performed for the library. This is outside of the standard design services. The library program to date is based on the OPN review of the original Himmel and Wilson document from 2014. Modifications and assumptions have already been made based on meetings between OPN and library staff from the summer of 2016. We would like to offer another look at confirming space needs with the new Library Director and staff and verify the space allocations identified in the Concept study. OPN would provide an additional meeting with the Library to review the existing program and provide meeting minute documentation of the updates. This effort would be required to update the required amount of shelving needs for each library department.

- The current City Hall/Library building at 112 E. 5th Street.

Standard Professional Services (Design) – Schematic Design, Design Development and Construction Documents

OPN and our consultants would prepare design documents read to be bid in a typical Design – Bid – Build Public Project delivery method.
Consultant Services provided:

- Landscape Design Services provided by Confluence – Site Layout Plan, Grading plan, Planting Plan, Site Details and Specifications.
- MEPT Design Services provided by Alvine Engineering – Mechanical HVAC, Plumbing, Fire Protection, Fire Alarm Services, Building Services up to 5'-0"

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
Fax (319) 363 7349

Des Moines
100 Court Ave., Ste. 100
Des Moines, IA 50309
Phone (515) 309 0722
Fax (515) 309 0725

www.opnarchitects.com

Insight + Passion

OPN ARCHITECTS

Daniel J. Thies, AIA
Steven K. Knierim, AIA
Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

outside the building, Electrical, Lighting and Controls, Telecommunications (voice and data), Security and video surveillance.
- Structural Design Services provided by Shuck Britson – Standard services
- Cost Estimation Services provided by Stecker-Harmsen – cost estimates provided at end of Schematic Design, end of Design Development and at 50% Construction Documents.

Standard Professional Services (Construction) – Bidding, Negotiation and Construction Administration

OPN and our consultants would complete standard professional services to see the project Bid and to provide typical Construction Admistration services.

Assumptions:

- To evaluate the existing building conditions no destructive demolition will be necessary, nor will any special equipment. All areas necessary to the evaluation are assumed to be visible or accessible.
- Hazardous material testing and reports and required abatement are to be provided by the owner outside of the scope of these services.
- Both the City Hall and Library project are to be designed and constructed concurrently to utilize fewer trips on the project. Fees would need to be re-negotiated if the projects are sequenced in a method that does not allow for them to be designed or constructed at different times.
- No design services would be provided to assist in moving the existing library space into temporary space during the construction phase as part of this scope of services.
- Construction Administration services fees based on a 52 week construction schedule accounting for bi-weekly construction meetings
- Services not included as part of standard services; LEED, energy modeling, record documentation.
- Owner initiated changes in project scope would require a re-evaluation in fee.
- Professional Fee is based on an estimated construction cost of $3,738,897, developed from concept work completed during the feasibility study.

Proposal Summary

Schedule: Design Phase to commense mid-December and complete in the summer of 2018. Construction start date around August 23rd 2018 with a duration estimate of 52 weeks.

Compensation: Professional fees to complete (Design) Phase services as outlined in this proposal will be a lump sum fee as follows:

(Design Phase) Schematic Design, Design Development and Consturction Documents

Professional Fee **$289,746**

Optional Programming Review (see description above) *$ 9,800*
Not included in total professional fee amout below

(Construction Phase) Bidding and Negotiations, Construction Administration

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
Fax (319) 363 7349

Des Moines
100 Court Ave., Ste. 100
Des Moines, IA 50309
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Daniel J. Thies, AIA
Steven K. Knierim, AIA
Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

Professional Fee	**$108,288**
Total Professional Fee	**$398,034**

Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorized travel, courier services, express mail, in house printing, mileage and meal reimbursement. Estimated Reimbursables range of $5500-$6500.
Reimbursable expense not included would be plan review fees, permits and fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

OPN will invoice monthly based on a percentage of work completed-to-date. Payment is due the Architect within (30) days from the date the invoice.

Professional Services Agreement between the City of Carroll and OPN Architects is anticipated to be an AIA B101 [Standard Form of Agreement Between Owner and Architect]. Shuck-Britson, Alvine Engineering, Confluence and Stecker-Harmsen will be sub-consultants to OPN Architects.

Again, I would like to thank you and the City of Carroll for the opportunity to present our fee proposal. These projects will undoubtedly be of great benefit to the community and we are excited for the opportunity to be a part of them.

If you find you have any questions or desire additional information, please do not hesitate to call. Should you find our proposal acceptable, please sign and return this letter and we will prepare a draft contract for your review and signature.

We thank you for considering OPN Architects and I look forward to your response.

Danielle Hermann, AIA
OPN ARCHITECTS

Associate Principal

Accepted: _____

Title: _____

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
Fax (319) 363 7349

Des Moines
100 Court Ave., Ste. 100
Des Moines, IA 50309
Phone (515) 309 0722
Fax (515) 309 0725

www.opnarchitects.com

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CARROLL PUBLIC LIBRARY AND CITY HALL
EXHIBIT 'B'

OPN ARCHITECTS

Cedar Rapids
200 Fifth Avenue SE Ste. 201
Cedar Rapids, Iowa 52401
(319) 363-6018

Des Moines
100 Court Avenue Ste. 100
Des Moines, Iowa 50309
(515) 309-0722

Iowa City
24 ½ S. Clinton Street
Iowa City, Iowa 52240
(319) 363-6018

Madison
301 N. Broom Street Ste. 100
Madison, Wisconsin 53703
(608) 819-0260

opnarchitects.com

OPN ARCHITECTS, INC.
2017 HOURLY FEE RATE

PRINCIPAL	$225/HOUR
ASSOCIATE PRINCIPAL	$150/HOUR
ASSOCIATE	$140/HOUR
PROJECT ARCHITECT/PROJECT MANAGER	$115/HOUR
ARCHITECT	$95/HOUR
LANDSCAPE ARCHITECT	$80/HOUR
JOB CAPTAIN	$85/HOUR
INTERN ARCHITECT	$65/HOUR
INTERN LANDSCAPE ARCHITECT	$65/HOUR
SENIOR INTERIOR DESIGNER	$95/HOUR
CONSTRUCTION ADMINISTRATOR	$90/HOUR
REVIT DRAFTSPERSON	$45/HOUR
INTERIOR DESIGNER (NCIDQ CERTIFIED)	$75/HOUR
INTERIOR DESIGNER	$60/HOUR
DIRECTORS OF BUSINESS SUPPORT	$90/HOUR
MARKETING COORDINATOR	$55/HOUR
ADMINISTRATIVE STAFF	$50/HOUR
COLLEGE INTERNS	$35/HOUR

These rates are subject to annual adjustment (on or about January 1) and your contract will adjust accordingly

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Eighteenth day of December in the year Two thousand and seventeen
(In words, indicate day, month and year.)

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

City of Carroll
112 E. 12th Street
Carroll, IA 51401

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

OPN Architects, Inc.
100 Court Avenue, Suite 100
Des Moines, IA 50309

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

17843000 Carroll City Hall
627 N. Adams Street
Carroll, IA 51401

REMIT ALL PAYMENTS TO:
OPN Architects Inc.
200 Fifth Avenue SE, Suite 201
Cedar Rapids, IA 52401

ATTN: Vickie Choate (vchoate@opnarchitects.com)
Becky Ulferts (bulferts@opnarchitects.com)

The Owner and Architect agree as follows.

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

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

Init.
/
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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Exhibit 'A'

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

.1 Commencement of construction date:

August 23, 2018

.2 Substantial Completion date:

March 23, 2019

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

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

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

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

Each Occurrence: $1,000,000 / Aggregate: $2,000,000

.2 Automobile Liability

Single Combined Limit: $1,000,000

.3 Workers' Compensation

Per Statute

.4 Professional Liability

Per Claim: $2,000,000
Per Aggregate: $2,000,000

.5 Excess / Umbrella Liability

Each Occurrence: $2,000,000 / Aggregate: $2,000,000

.6 Employers Liability

Per Accident, Per Disease, and Policy Limit: $500,000

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

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

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

§ 3.2.5 Based on the Owner's approval 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 modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

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

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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

§ 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 of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

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

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

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

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

.1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;

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.2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
.3 organizing and conducting a pre-bid conference for prospective bidders;
.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

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

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by
.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
.2 organizing and participating in selection interviews with prospective contractors; and
.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall 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 4.3, 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 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

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

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

§ 3.6.4 SUBMITTALS

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods,

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techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

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ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.
(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	**Responsibility** *(Architect, Owner or Not Provided)*	**Location of Service Description** *(Section 4.2 below or in an exhibit attached to this document and identified below)*
§ 4.1.1 Programming (B202™–2009)	Not Provided - Add Service	
§ 4.1.2 Multiple preliminary designs	Not Provided - Add Service	
§ 4.1.3 Measured drawings	Not Provided - Add Service	
§ 4.1.4 Existing facilities surveys	Not Provided - Add Service	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided - Add Service	
§ 4.1.6 Building Information Modeling (E203™–2008)	Not Provided - Add Service	
§ 4.1.7 Civil engineering	Owner - Survey	
§ 4.1.8 Landscape design	Confluence	See Exhibit 'A'
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	See Exhibit 'A'
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided - Add Service	
§ 4.1.11 Detailed cost estimating	Steck-Harmsen	See Exhibit 'A'
§ 4.1.12 On-site Project Representation (B207™–2008)	Not Provided - Add Services	
§ 4.1.13 Conformed construction documents	Not Provided - Add Service	
§ 4.1.14 As-Designed Record drawings	Not Provided - Add Service	
§ 4.1.15 As-Constructed Record drawings	Not Provided - Add Service	
§ 4.1.16 Post occupancy evaluation	Not Provided - Add Service	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided - Add Service	
§ 4.1.18 Tenant-related services	Not Provided - Add Service	
§ 4.1.19 Coordination of Owner's consultants	Not Provided - Add Service	
§ 4.1.20 Telecommunications/data design	Alvine Engineering	See Exhibit 'A'
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided - Add Service	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided - Add Service	
§ 4.1.23 Extensive environmentally responsible design	Not Provided - Add Service	

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§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided - Add Service	
§ 4.1.25 Fast-track design services	Not Provided - Add Service	
§ 4.1.26 Historic Preservation (B205™–2007)	Not Applicable	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided - Add Service	

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

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

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

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

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

.9 Evaluation of the qualifications of bidders or persons providing proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 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;

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.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

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

.2 Fifeteen (15) visits to the site by the Architect over the duration of the Project during construction

.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 One (1) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Thirty (30) weeks of August 23, 2018, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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

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

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

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

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

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

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

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

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

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

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§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

§ 8.2 MEDIATION

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

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

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

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

[ ] Arbitration pursuant to Section 8.3 of this Agreement

[X] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

(Paragraphs Deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

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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 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

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

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

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

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

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

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

(Design Phase) Schematic Design, Design Development and Construction Documents
Professional Fee $128,650

(Construciton Phase) Bidding and Negotiations, Construction Administration
Professional Fee $53,482

Total Professional Fee $182,132

REMIT ALL PAYMENTS TO:
OPN Architects Inc.
200 Fifth Avenue SE, Suite 201
Cedar Rapids, IA 52401

ATTN: Vickie Choate (vchoate@opnarchitects.com)
Becky Ulferts (bulferts@opnarchitects.com)

§ 11.2 For Additional Services designated in Section 4.1, 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.)

Stipulated Sum per service or per Standard Hourly Rates

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Per Standard Hourly Rates

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

(Paragraph Deleted)

(Table Deleted)

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

See Exhibit 'B'

Employee or Category	Rate

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

- **.1** Transportation and authorized out-of-town travel and subsistence;
- **.2** Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- **.3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, standard form documents;
- **.5** Postage, handling and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- **.8** Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- **.9** All taxes levied on professional services and on reimbursable expenses;
- **.10** Site office expenses; and
- **.11** Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorized travel, courier services, express mail, in house printing, mileage and meal reimbursement. Estimated Reimbursable range between $4,000 - $5,00. Reimbursable expense not included would be plan review fees, permits and fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE
If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Not Applicable

§ 11.10 PAYMENTS TO THE ARCHITECT
§ 11.10.1 An initial payment of Zero Dollars ($ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) 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.

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

1.5 % monthly

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

12.1 179D(d)(4) Energy Tax Allocation for Designers of Government-Owned Buildings. The Owner agrees to allocate to the Architect and the Architect's participating and responsible Consultants all Section 179D tax deductions dedicated the Designers of energy efficient commercial property, provided these commercial property improvements qualify for allocations per the Energy Policy Act of 2005, Section 179D, Notice 2008-40. Upon achieving Substantial Completion for the Project, the Architect will prepare and submit the Form of Allocation letter to the Owner for approval on behalf of the design team and participating Consultants. The Architect and Architect's participating Consultants will maintain records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the Consultant relevant to 197D per IRS regulations.

Reference: As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code in order to encourage the energy efficient design and construction of new or rehabilitated properties. Notice 2008-40 of Internal Revenue Bulletin 2008-14 sets forth guidance as to the allocation off the section 179D dedcution to designers of government owned buildings. Notice 2008-40 provides that in the case of a government owned property (Federal, State or Local government or political subdivision) the deduction for energy efficient buildings may be allocated to the designer for the taxable year that includes the date on which the property was placed in service. These tax allocations are not possible to claim as a government enetity and are therefore assigned to the responsible designer(s) of qualifying energy efficient property incorporated into the Project. A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specification for a new building or an addition to an existing building that incorporates energy efficient commercial property allowed under seciton 179D.

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 Owner and Architect.

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

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

(Paragraph Deleted)

.3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit 'A' - Proposal
Exhibit 'B' - Standard Hourly Rates

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

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OWNER	ARCHITECT
(Signature)	*(Signature)*
Eric Jensen, Mayor	Danielle C. Hermann, AIA, Associate Principal
(Printed name and title)	*(Printed name and title)*

Init.

/

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AIA® Document B101™ – 2007

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PAGE 1

AGREEMENT made as of the Eighteenth day of December in the year Two thousand and seventeen

...

City of Carroll
112 E. 12th Street
Carroll, IA 51401

...

OPN Architects, Inc.
100 Court Avenue, Suite 100
Des Moines, IA 50309

...

17843000 Carroll City Hall
627 N. Adams Street
Carroll, IA 51401

...

REMIT ALL PAYMENTS TO:

...

OPN Architects Inc.

...

200 Fifth Avenue SE, Suite 201

...

Cedar Rapids, IA 52401

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...

ATTN: Vickie Choate (vchoate@opnarchitects.com)

...

Becky Ulferts (bulferts@opnarchitects.com)

PAGE 2

Exhibit 'A'

...

August 23, 2018

...

March 23, 2019

PAGE 3

Each Occurrence: $1,000,000 / Aggregate: $2,000,000

...

Single Combined Limit: $1,000,000

...

Per Statute

...

Per Claim: $2,000,000

...

Per Aggregate: $2,000,000

...

.5 Excess / Umbrella Liability

...

Each Occurrence: $2,000,000 / Aggregate: $2,000,000

...

.6 Employers Liability

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...

Per Accident, Per Disease, and Policy Limit: $500,000

PAGE 10

§ 4.1.1 Programming (B202™–2009)	Not Provided - Add Service	
§ 4.1.2 Multiple preliminary designs	Not Provided - Add Service	
§ 4.1.3 Measured drawings	Not Provided - Add Service	
§ 4.1.4 Existing facilities surveys	Not Provided - Add Service	
§ 4.1.5 Site Evaluation and Planning (B203™–2007)	Not Provided - Add Service	
§ 4.1.6 Building Information Modeling ~~(E202™–2008)~~(E203™–2008)	Not Provided - Add Service	
§ 4.1.7 Civil engineering	Owner - Survey	
§ 4.1.8 Landscape design	Confluence	See Exhibit 'A'
§ 4.1.9 Architectural Interior Design (B252™–2007)	Architect	See Exhibit 'A'
§ 4.1.10 Value Analysis (B204™–2007)	Not Provided - Add Service	
§ 4.1.11 Detailed cost estimating	Steck-Harmsen	See Exhibit 'A'
§ 4.1.12 On-site Project Representation (B207™–2008)	Not Provided - Add Services	
§ 4.1.13 Conformed construction documents	Not Provided - Add Service	
§ 4.1.14 As-Designed Record drawings	Not Provided - Add Service	
§ 4.1.15 As-Constructed Record drawings	Not Provided - Add Service	
§ 4.1.16 Post occupancy evaluation	Not Provided - Add Service	
§ 4.1.17 Facility Support Services (B210™–2007)	Not Provided - Add Service	
§ 4.1.18 Tenant-related services	Not Provided - Add Service	
§ 4.1.19 Coordination of Owner's consultants	Not Provided - Add Service	
§ 4.1.20 Telecommunications/data design	Alvine Engineering	See Exhibit 'A'
§ 4.1.21 Security Evaluation and Planning (B206™–2007)	Not Provided - Add Service	
§ 4.1.22 Commissioning (B211™–2007)	Not Provided - Add Service	
§ 4.1.23 Extensive environmentally responsible design	Not Provided - Add Service	
§ 4.1.24 LEED® Certification (B214™–2012)	Not Provided - Add Service	
§ 4.1.25 Fast-track design services	Not Provided - Add Service	

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§ 4.1.26 Historic Preservation (B205™–2007)	Not Applicable	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007)	Not Provided - Add Service	

PAGE 11

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

...

.2 Fifeteen (15) visits to the site by the Architect over the duration of the Project during construction

...

.3 Two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

...

.4 One (1) inspections for any portion of the Work to determine final completion

...

§ 4.3.4 If the services covered by this Agreement have not been completed within ~~( ) months of the date of this Agreement,~~ Thirty (30) weeks of August 23, 2018, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

PAGE 14

[X] Litigation 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.~~

...

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~~§ 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.~~

PAGE 16

(Design Phase) Schematic Design, Design Development and Construction Documents
Professional Fee $128,650

(Construciton Phase) Bidding and Negotiations, Construction Administration
Professional Fee $53,482

Total Professional Fee $182,132

...

REMIT ALL PAYMENTS TO:

...

OPN Architects Inc.

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...

200 Fifth Avenue SE, Suite 201

...

Cedar Rapids, IA 52401

...

ATTN: Vickie Choate (vchoate@opnarchitects.com)

...

Becky Ulferts (bulferts@opnarchitects.com)

...

Stipulated Sum per service or per Standard Hourly Rates

...

Per Standard Hourly Rates

...

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent (10 %), or as otherwise stated below:

...

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

...

~~Schematic Design Phase~~		~~percent (~~		~~%)~~
~~Design Development Phase~~		~~percent (~~		~~%)~~
~~Construction Documents Phase~~		~~percent (~~		~~%)~~
~~Bidding or Negotiation Phase~~		~~percent (~~		~~%)~~
~~Construction Phase~~		~~percent (~~		~~%)~~
~~Total Basic Compensation~~	~~one hundred~~	~~percent (~~	~~100~~	~~%)~~

~~**§ 11.6** When compensation is based on a percentage of the Cost of the Work 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, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

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...

See Exhibit 'B'

...

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants~~plus percent (%)~~. Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorized travel, courier services, express mail, in house printing, mileage and meal reimbursement. Estimated Reimbursable range between $4,000 - $5,00.

...

~~of the expenses incurred.~~Reimbursable expense not included would be plan review fees, permits and fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

...

Not Applicable

...

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

...

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Sixty (60) 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.

PAGE 18

1.5 % monthly

...

12.1 179D(d)(4) Energy Tax Allocation for Designers of Government-Owned Buildings. The Owner agrees to allocate to the Architect and the Architect's participating and responsible Consultants all Section 179D tax deductions dedicated the Designers of energy efficient commercial property, provided these commercial property improvements qualify for allocations per the Energy Policy Act of 2005, Section 179D, Notice 2008-40. Upon achieving Substantial Completion for the Project, the Architect will prepare and submit the Form of Allocation letter to the Owner for approval on behalf of the design team and participating Consultants. The Architect and Architect's participating Consultants will maintain records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the Consultant relevant to 197D per IRS regulations.

...

Reference: As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code in order to encourage the energy efficient design and construction of new or rehabilitated properties. Notice 2008-40 of Internal Revenue Bulletin 2008-14 sets forth guidance as to the allocation off the section 179D dedcution to designers of government owned buildings. Notice 2008-40 provides that in the case of a government owned property (Federal, State or Local government or political subdivision) the deduction for energy efficient buildings

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may be allocated to the designer for the taxable year that includes the date on which the property was placed in service. These tax allocations are not possible to claim as a government enetity and are therefore assigned to the responsible designer(s) of qualifying energy efficient property incorporated into the Project. A designer may include, for example, an architect, engineer, contractor, environmental consultant or energy services provider who creates the technical specification for a new building or an addition to an existing building that incorporates energy efficient commercial property allowed under seciton 179D.

...

~~.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:~~

...

Exhibit 'A' - Proposal

...

Exhibit 'B' - Standard Hourly Rates

PAGE 19

Eric Jensen, Mayor

Danielle C. Hermann, AIA, Associate Principal

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User Notes: (3B9ADA1A)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:21:21 on 12/11/2017 under Order No. 4396204884 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

(Signed)

_____

(Title)

_____

(Dated)

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(3B9ADA1A)

OPN ARCHITECTS

Daniel J. Thies, AIA
Steven K. Knierim, AIA
Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

December 18, 2017

Mr. Mike Pogge-Weaver
City Manager
City of Carroll
112 E. 5th Street
Carroll, IA 51401-2799

RE: Proposal for Phase II Services (Basic Services) for City of Carroll City Hall

Mike:

OPN could not be more excited to be a part of this project. Please find below the scope of services for the Library Project located at 627 N. Adams St. Carroll, IA 51401.

We have separated out the Library and the City Hall into two individual fee proposals. We have also divided up the fee for Design Phase services from Bidding and Construction Administration services. The follow is specific to the City Hall building only. A lum sum professional fee for the two design phases are indicated below.

Programming Review – Additional services if desired

This phase of the work is intended to review, analyze and confirm prior space needs work that was performed for the City Hall during the Concept Development. This is outside of the standard design services. The City Hall program was initially established during conceptual phase to get a estimation of space needs. Assumptions have already been made based on meetings between OPN and city staff from the summer of 2016 to allow a rough space needs to be established. We would like to offer another look at confirming space needs with the City and its staff and confirm the space allocations identified in the Concept study. Alternatively the city could also internally confirm the space need requirements and provide that information to OPN versus an additional programming phase. If the city choses to include these service in our scope, OPN would provide an additional meeting with the staff to review the existing program and provide meeting minute documentation of the updates. A full programming document would not be included in this scope of work.

- The current Commercial Savings Bank site at 627 N. Adams Street.

Standard Professional Services (Design) – Schematic Design, Design Development and Construction Documents

OPN and our consultants would prepare design documents read to be bid in a typical Design – Bid – Build Public Project delivery method.
Consultant Services provided:

- Landscape Design Services provided by Confluence – Single design concept of site design and landscaping..

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
Fax (319) 363 7349

Des Moines
100 Court Ave., Ste. 100
Des Moines, IA 50309
Phone (515) 309 0722
Fax (515) 309 0725

www.opnarchitects.com

Insight + Passion

OPN ARCHITECTS

Daniel J. Thies, AIA
Steven K. Knierim, AIA
Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

- MEPT Design Services provided by Alvine Engineering – Mechanical HVAC, Plumbing, Fire Protection, Fire Alarm Services, Building Services up to 5'-0" outside the building, Electrical, Lighting and Controls, Telecommunications (voice and data), Security and video surveillance, Audio/Visual Design for Council Chambers only.
- Structural Design Services provided by Shuck Britson – Standard services
- Cost Estimation Services provided by Stecker-Harmsen – cost estimates provided at end of Schematic Design, end of Design Development and at 50% Construction Documents.

Standard Professional Services (Construction) – Bidding, Negotiation and Construction Administration

OPN and our consultants would complete standard professional services to see the project Bid and to provide typical Construction Admistration services.

Assumptions:

- To evaluate the existing building conditions no destructive demolition will be necessary, nor will any special equipment. All areas necessary to the evaluation are assumed to be visible or accessible.
- Hazardous material testing and reports and required abatement are to be provided by the owner outside of the scope of these services.
- Both the City Hall and Library project are to be designed and constructed concurrently to utilize fewer trips on the project. Fees would need to be re-negotiated if the projects are sequenced in a method that does not allow for them to be designed or constructed at different times.
- No design services would be provided to assist in moving the existing city hall space into temporary space during the construction phase as part of this scope of services.
- Construction Administration services fees based on a 30 week construction schedule accounting for bi-weekly construction meetings
- Services not included as part of standard services; LEED, energy modeling, record documentation.
- Owner initiated changes in project scope would require a re-evaluation in fee.
- Professional Fee is based on an estimated construction cost of $1,453,629, developed from concept work completed during the feasibility study.

Proposal Summary

Schedule: Design Phase to commense mid-December and complete in the summer of 2018. Construction start date around August 23rd 2018 with a duration estimate of 30 weeks.

Compensation: Professional fees to complete (Design) Phase services as outlined in this proposal will be a lump sum fee as follows:

(Design Phase) Schematic Design, Design Development and Consturction Documents

Professional Fee	**$128,650**
Optional Programming Review (see description above)	*$ 3,200*

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
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Bradd A. Brown, AIA
Terry L. Gebard, AIA
David J. Sorg, AIA

Not included in total professional fee amout below

(Construction Phase) Bidding and Negotiations, Construction Administration

Professional Fee **$ 53,482**

Total Professional Fee **$182,132**

Reimbursable expenses are not included in Professional Fees and will be invoiced at 1.1 times actual cost. Reimbursable expenses include authorized travel, courier services, express mail, in house printing, mileage and meal reimbursement. Estimated Reimbursable expense range between $4000-$5000
Reimbursable expense not included would be plan review fees, permits and fees, reproduction of project documents, printing for project bid documents, photography [if required], out-of-house digital processing.

OPN will invoice monthly based on a percentage of work completed-to-date. Payment is due the Architect within (30) days from the date the invoice.

Professional Services Agreement between the City of Carroll and OPN Architects is anticipated to be an AIA B101 [Standard Form of Agreement Between Owner and Architect]. Shuck-Britson, Alvine Engineering, Confluence and Stecker-Harmsen will be sub-consultants to OPN Architects.

Again, I would like to thank you and the City of Carroll for the opportunity to present our fee proposal. These projects will undoubtedly be of great benefit to the community and we are excited for the opportunity to be a part of them.

If you find you have any questions or desire additional information, please do not hesitate to call. Should you find our proposal acceptable, please sign and return this letter and we will prepare a draft contract for your review and signature.

We thank you for considering OPN Architects and I look forward to your response.

Danielle Hermann, AIA
OPN ARCHITECTS
Associate Principal

Accepted: _____

Title: _____

Cedar Rapids
200 Fifth Ave. SE, Ste. 201
Cedar Rapids, IA 52401
Phone (319) 363 6018
Fax (319) 363 7349

Des Moines
100 Court Ave., Ste. 100
Des Moines, IA 50309
Phone (515) 309 0722
Fax (515) 309 0725

www.opnarchitects.com

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CARROLL PUBLIC LIBRARY AND CITY HALL
EXHIBIT 'B'

OPN ARCHITECTS

Cedar Rapids
200 Fifth Avenue SE Ste. 201
Cedar Rapids, Iowa 52401
(319) 363-6018

Des Moines
100 Court Avenue Ste. 100
Des Moines, Iowa 50309
(515) 309-0722

Iowa City
24 ½ S. Clinton Street
Iowa City, Iowa 52240
(319) 363-6018

Madison
301 N. Broom Street Ste. 100
Madison, Wisconsin 53703
(608) 819-0260

opnarchitects.com

OPN ARCHITECTS, INC.
2017 HOURLY FEE RATE

PRINCIPAL	$225/HOUR
ASSOCIATE PRINCIPAL	$150/HOUR
ASSOCIATE	$140/HOUR
PROJECT ARCHITECT/PROJECT MANAGER	$115/HOUR
ARCHITECT	$95/HOUR
LANDSCAPE ARCHITECT	$80/HOUR
JOB CAPTAIN	$85/HOUR
INTERN ARCHITECT	$65/HOUR
INTERN LANDSCAPE ARCHITECT	$65/HOUR
SENIOR INTERIOR DESIGNER	$95/HOUR
CONSTRUCTION ADMINISTRATOR	$90/HOUR
REVIT DRAFTSPERSON	$45/HOUR
INTERIOR DESIGNER (NCIDQ CERTIFIED)	$75/HOUR
INTERIOR DESIGNER	$60/HOUR
DIRECTORS OF BUSINESS SUPPORT	$90/HOUR
MARKETING COORDINATOR	$55/HOUR
ADMINISTRATIVE STAFF	$50/HOUR
COLLEGE INTERNS	$35/HOUR

These rates are subject to annual adjustment (on or about January 1) and your contract will adjust accordingly

LEASE – BUSINESS PROPERTY

THIS AGREEMENT, made and entered into on this _____ day of _____, _____, by and between **R & R RENTAL, INC.**, an Iowa Corporation, ("Landlord"), whose address for the purpose of this lease, is 624 N. Carroll Street; Carroll, Iowa 51401 and **City of Carroll** ("Tenant"), whose address for the purpose of this lease is 112 East 5th St ; Carroll, Ia. 51401

THE PARTIES AGREE AS FOLLOWS:

Pre-Lease

1. PREMISE AND TERM. Landlord leases to Tenant the following real estate, situated in Carroll County, Iowa in a building situated on the following property:

   Approximately 3722 square feet of available space in a building situated at 515 North Carroll Street; Carroll, Iowa.

   Together with all improvements thereon, and all rights, easements and appurtenances thereto belonging, for a term beginning on the first day of December 18 , 2017 and ending on July 31 (7.5 months) upon the condition that Tenant performs as provided in this lease.

2. RENT. Tenant agrees to pay Landlord rent as follows:
   - $792.00 (including utilities) the first day of each month.

Lease

1. ON August 1, 2018 (eight months after beginning of Pre-Lease) Tenant shall commence Lease for twelve months. After twelve months there shall be a month-to-month renewal term of up to six (6) additional months. Prior to occupancy by Tenant, Landlord will paint walls and clean carpets in the premises.

2. LEASE AMOUNT. Lease amount shall be $2559.67 per month, plus utilities; and shall include OPTIONS A and B, which are attached as Exhibit A (Options are attached).

3. IMPROVEMENTS. The owner shall be responsible for the completion of Tenant Improvements that are depicted on Exhibit B including: Office (#4), expand office by removing walls and relocating door and Conference Room (#12) add a wall that divides space in half and add a door. Work shall be completed to the Tenant's satisfaction.

4. POSSESSION. Tenant shall be entitled to possess on the first day of the lease term, and shall yield possession to the Landlord at the termination of this lease. Should Landlord be unable to give possession on said date for situations outside of their control, Tenant's only damages shall be prorated abatement of rents.

5. USE. Tenant covenants and agrees during the term of this lease to use and to occupy the leased premises only for the business affairs of The City of Carroll.

6. CARE AND MAINTENANCE. Tenant shall make no structural changes or alterations without the prior written consent of the Landlord.

   CARE, MAINTENANCE. Tenant shall be responsible for routine care and maintenance; including, but not limited to replacement of bulbs, furnace filters, and plumbing repairs.

7. UTILITIES AND SERVICES. Tenant, during the term of this lease, shall pay, before delinquency, all charges for use of telephone, sewer, gas, heat, electricity, power, air conditioning, garbage disposal and trash disposal. Tenant's responsibility of utilities will begin August 1 , 2018.

8. SURRENDER. Upon the termination of this lease, Tenant will surrender the premises to Landlord in good and clean condition, except for ordinary wear and tear or damage without fault or liability of Tenant. Continued possession, beyond the term of this lease and the acceptance of rent by Landlord shall constitute a month-to-month extension of this lease.

9. ASSIGNMENT AND SUBLETTING. No assignment or subletting, either voluntary or by operation of law, shall be effective without prior written consent of Landlord, which consent shall not be unreasonably withheld.

10. PROPERTY INSURANCE. Tenant will maintain liability and property insurance on their own contents. Landlord will be named as "Additional Insured" on Tenant's policy.
    Landlord will insure building, including glass & windows, against loss.

11. INDEMNITY AND LIABILITY INSURANCE. Except for any negligence of Landlord, Tenant will protect, defend and indemnify Landlord from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury or damage to any person or property, happening or done in, upon or about the premises, or due directly or indirectly to the tenancy, use or occupancy thereof, or any part thereof by Tenant or any person claimed through or under Tenant.

12. DAMAGE. In the event of damage to the premises, so that Tenant is unable to conduct business on the premises, this lease may be terminated at the option of either party. Such determination shall be effected by notice of one party to the other within twenty days after such notice; and both parties shall thereafter be released from all future obligations hereunder.

13. MECHANICS LIEN. Neither Tenant, nor anyone claiming by, through or under Tenant, shall have the right to file any mechanic's lien against the premises. Tenants shall give notice in advance to all contractors and subcontractors who may furnish, or agree to furnish, any material, service or labor for any improvement on the premises.

14. TERMINATION UPON DEFAULT OF TENANT. Upon default in payment of rent, abandonment of the premises, or upon any other default by the Tenant of the terms of this lease, this lease may, at the option of the Landlord, and without prejudice to any other rights or remedies afforded Landlord by law, be cancelled and forfeited; provided, however, before any such cancellation and forfeiture Landlord shall give Tenant notice specifying the default, or defaults, and stating that this lease will be cancelled and forfeited ten days after notice, unless such default or defaults are remedied within such period.

15. TERMINATION OF LEASE PRIOR TO POSSESSION. The tenant reserves the right to terminate this lease with 30 days written notice, if the Carroll Library/City Hall lowest, responsive, responsible bid is higher than the budgeted amount determined by the City. If the lease is terminated prior to possession, the Tenant acknowledges the financial loss that the Landlord will face and agrees to reimburse the Landlord 200% of the cost of all remodeling completed by the Landlord for the Tenant to compensate the Landlord for holding the space for the Tenant. For the purposes of this section, possession means the Tenant has taken control of the space and has begun to physically relocate the supplies and equipment to the lease space.

16. SIGNS. Landlord during the last ninety days of this lease, shall have the right to maintain on the premises either or both a "For Rent" or "For Sale" sign. Tenant will permit prospective tenants or buyers to enter and examine the premises.

17. NOTICES AND DEMANDS. All notices shall be given to the parties hereto at the addresses designated unless either party notifies the other, in writing, of a different address. Without prejudice to any other method of notifying a party in writing or making a demand or other communication such notice shall be considered given under the terms of this lease when it is deposited in the U.S. Mail, registered or certified, property addressed, return receipt requested, and postage prepaid.

18. PROVISIONS BINDING. Each and every covenant an agreement herein contained shall extend to and be binding the respective successors, heirs, administrators, executors and assignments of the parties hereto.

Dated: _____

Landlord: _____

Roger J. Kanne
R & R RENTALS
Fed ID #42-1389265

Dated: _____

Tenant: _____

_____
THE CITY OF CARROLL; Carroll, Iowa 51401
Fed ID # _____

REVISED PROPOSAL FOR BUILDING LEASE
TEMPORARY SPACE

SEPARATE SITE – CITY HALL

DATE: 10-23-17

TO: Carroll City Manager
112 E 5th St
Carroll, IA 51401

FROM: R & R RENTAL, INC - by _____
Partner
624 N Crawford St.
Carroll, IA 51401
PH: 712-792-5840

<> <> <> <> <>

LOCATION: 515 N. Carroll St.: Carroll, Iowa 51401

<> <> <> <> <>

Attached are the optional rent proposals based on our discussion for additional space.

OPTION A: EXPANDED OFFICE AND ADD CONFERENCE ROOM

		Price per SF per year
Monthly Lease Price	$1584.00	$6.9020
Tenant Remodel	$4900.00	$1.7792
Adjusted Rent	**$1992.33**	**$8.6812**

R & R RENTAL, INC

Roger J. Kanne

OPTION B: ADDITIONAL OFFICE/STORAGE $6.00 PER SF

		Price per SF per year
Back Office Area (168 sf)	$ 84.00	$6.0000
Storage Area (800 sf)	$ 400.00	$6.0000
Monthly Lease Price	$ 484.00	$6.0000
Tenant Remodel	$1000.00	$1.0331
Adjusted Rent	**$ 567.33**	**$7.0331**

R & R RENTAL, INC

Roger J. Kanne

Roger J. Kanne

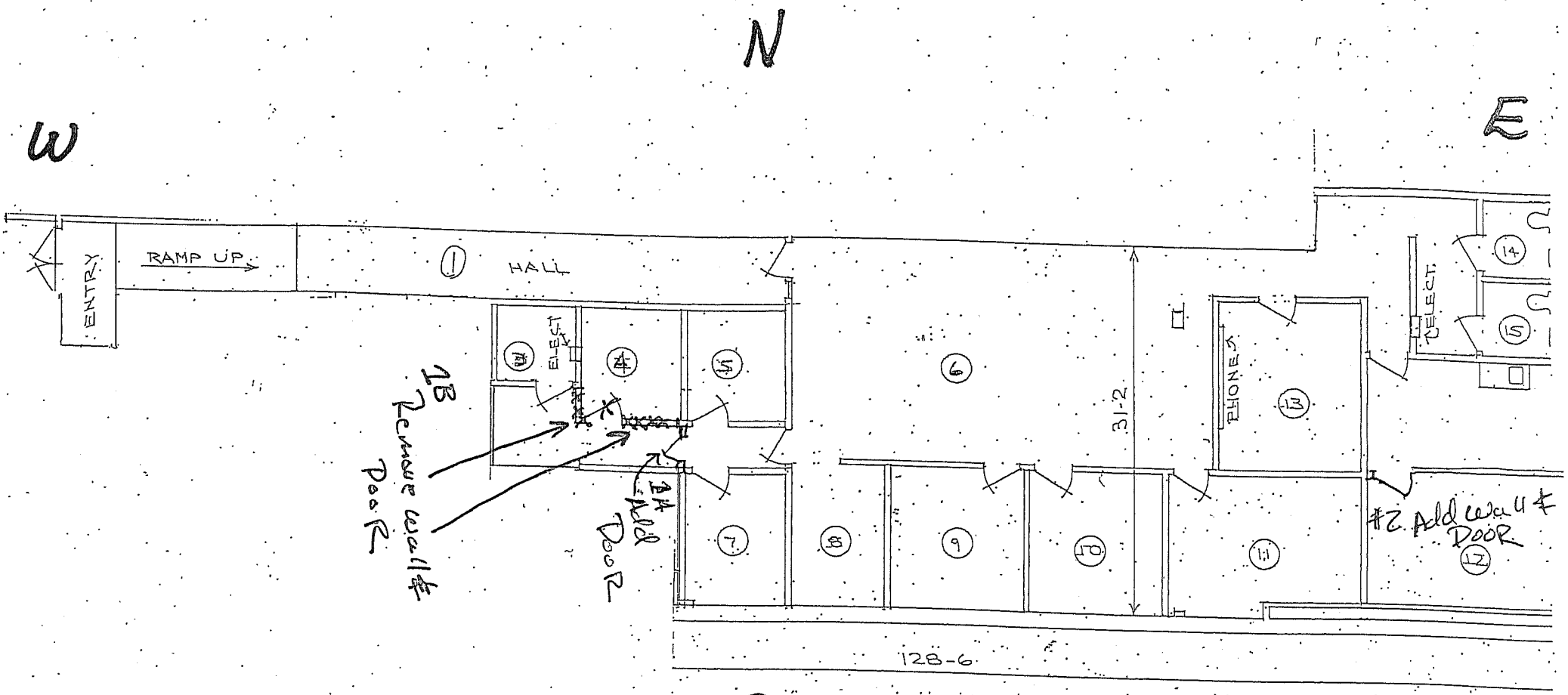
OPTION A + B TOTALS

TOTALS

Total monthly lease (A+B)	$ 2,559.67	
12 Month Lease	$30,716.00	
7 Month Pre-Lease	$ 5,544.00	(792 per month)
TOTAL LEASE COST	$36,260.00	

R & R RENTAL, INC

Roger J. Kanne



EXISTING FLOOR PLAN

SCALE: 1/8" = 1'-0

510 N. Carroll St

LEASE AGREEMENT

THIS LEASE AGREEMENT, entered into this 11th day of December, 2017, by and between Badding Construction Company, an Iowa corporation (hereinafter called "LANDLORD"), and City of Carroll (hereinafter called "TENANT").

ARTICLE I - PREMISES

Section 1.1 Demised Premises

In consideration of the rents, covenants, and agreements to be performed by Tenant, Landlord demises and leases to Tenant, and Tenant rents from Landlord, the premises known locally as 425 W. Hwy 30, Suite 340, Carroll, Carroll County, Iowa (hereinafter called the "DEMISED PREMISES"). The Demised Premises are depicted on Exhibit A and consist of approximately 8,401 square feet.

Section 1.2 Use of Common Areas

Tenant shall have the right to the use, in common with others, the Common Areas of the Shopping Center, subject to the terms of this Lease and reasonable rules and regulations adopted by Landlord.

Section 1.3 Shopping Center Defined

The term "SHOPPING CENTER" shall mean all buildings, structures, parking facilities, common facilities, and the like constructed or to be constructed on the property containing the Demised Premises. The Shopping Center is depicted in Exhibit A.

Section 1.4 Common Areas Defined

The term "COMMON AREAS" shall mean all parking areas, driveways, entrances and exits, sidewalks, landscaped areas, and all other common areas constructed or to be constructed for use in common by Tenant, other tenants in the Shopping Center and their employees and business invitees. The Common Areas shall be subject to the exclusive control and management of Landlord and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the use of the Common Areas. Landlord shall have the right to designate employee parking areas within the Common Areas. Landlord reserves the right to modify the configuration of the Common Areas from time to time, including the right to construct additional building, kiosks and similar structures thereon. No modifications shall restrict permanent access to the Demised Premises nor establish permanent employee parking spaces in front of the Demised Premises.

ARTICLE II - TERM

Section 2.1 Term

The term of this Lease shall be for eighteen (18) months beginning on July 1, 2018 (hereinafter called the "COMMENCEMENT DATE") and ending on December 31, 2019, unless terminated sooner hereunder.

Landlord agrees to give possession of the Demised Premises to the Tenant thirty (30) days prior to the commencement date of this lease for Tenant opening preparations if all of the following conditions are met: (1) execution of this Lease; (2) presentation of insurance certificates described in Article VI; (3) placement of the utilities for the Demised Premises in the Tenant's name; and (4) Landlord has completed all build-out work. The insurance and indemnity provisions contained in Article VI shall be fully applicable during this period of possession.

Section 2.2 Tenant's Installation of Fixtures

To expedite commencement of Tenant's business in the Demised Premises, Tenant may enter upon the Demised Premises with the prior written approval of Landlord to perform Tenant's work and install fixtures and furnishings provided all conditions set forth in Section 2.1 have been met. Landlord shall not be liable for loss of or damage to fixtures, equipment or other personal property installed or placed within the Demised Premises. Tenant shall pay the cost of all utilities and insurance from the time it commences work within the Demised Premises.

Section 2.3 Termination of lease prior to possession

The Tenant reserves the right to terminate this lease with 30 days written notice, if the Carroll library/city hall lowest, responsive, responsible bid is higher than the budgeted amount determined by the City. If the lease is terminated prior to possession, the Tenant acknowledges the financial loss that the Landlord will face and agrees to reimburse the Landlord 100% of the cost of all remodeling completed by the Landlord for the Tenant and a flat fee of $9,450.00 to compensate the Landlord for holding the space for the Tenant. Additionally, any lease payments made by the Tenant prior to terminating the lease will be forfeited by the Tenant. For the purposes of this section possession means the Tenant has taken control of the space and has begun to physically relocate supplies and equipment to the lease space.

ARTICLE III - RENT AND OTHER CHARGES

Section 3.1 Rent

Tenant shall pay Landlord as rent for the Demised Premises the monthly amount outlined below during the term of this Lease (hereinafter called "RENT"), in advance, on the first day of each month at 814 West 9th Street, Carroll, Iowa, 51401 or at such other place designated by Landlord:

Period	Rate/Month
Months 1-18	$ 4,725.00

Section 3.2 Option to Renew

So long as Tenant is not in default under the terms and provisions of this Lease Tenant shall have the right and option to an automatic month to month extension of the Lease Term for up to an additional six (6) months on the same terms as provided in this Lease. Tenant shall provide written notice of intent to terminate the agreement at least thirty (30) days prior to the end of either the initial or extended term.

Tenant may exercise said option by giving Landlord written notice pursuant to Section 13.4 of this Lease.

Section 3.3 Additional Rent

Any other sums of money or charges to be paid by Tenant to Landlord pursuant to this Lease shall be called "ADDITIONAL RENT."

Section 3.4 Taxes

Tenant shall pay all taxes assessed against Tenant's merchandise, trade fixtures and equipment located within the Demised Premises. Tenant shall pay all franchise taxes and rent taxes required for Tenant's business.

Landlord shall pay all real estate and ad valorem taxes, including all general or special assessments, levied or assessed by any lawful authority for each calendar year during the term of this Lease, including those assessed against the land and/or buildings comprising the Shopping Center (hereinafter called "TAXES").

Section 3.5 Insurance

Landlord shall pay all casualty and liability insurance carried by Landlord pursuant to the terms of this Lease (hereinafter called "INSURANCE").

Any additional property, casualty or liability insurance charges incurred by the Landlord due to the nature of business performed by the Tenant shall be paid entirely by the Tenant.

Section 3.6 Common Area Maintenance

Landlord shall pay common area expenses, including, without limitation, the operating, managing, equipping, lighting, repairing, replacing, and maintaining the Common Areas, specifically including landscaping and gardening, line painting, lighting, traffic control, if any, sanitary control, removal of snow, trash, rubbish and garbage and other refuse, cost of all rentals of machinery equipment in such maintenance (hereinafter called "CAM").

Section 3.7 Past Due Rent and Additional Rent

If Tenant shall fail to pay any Rent or Additional Rent when the same is due and payable, Landlord may impose, in addition to the unpaid amount, a late charge penalty equal to ten percent (10%) of the unpaid amount. Said penalty shall be imposed on the 10th day after the date the Rent or Additional Rent is due.

If Tenant shall fail to pay any Rent or Additional Rent when the same is due and payable and such amount remains unpaid for thirty (30) days, Tenant shall pay interest on such amount after the thirty (30) day period at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is the lesser (hereinafter called the "DEFAULT RATE").

Section 3.8 Utility Charges

Landlord shall be responsible for all utility/service charges for water and sewer. Tenant shall be responsible for all utility/service charges for electricity, gas and trash removal. In no event shall Landlord be liable for any interruption or failure in the supply of any utilities to the Demised Premises.

ARTICLE IV - CONDUCT OF BUSINESS BY TENANT

Section 4.1 Use of Premises

Tenant shall use the Demised Premises solely for the use of a temporary Library and uses incidental thereto and for no other purpose without Landlord's prior written approval. Tenant shall comply with all rules, regulations and laws of any governmental authority with respect to its use and occupancy of the Demised Premises. Tenant shall not violate any exclusive use rights granted by Landlord at any time during the term of this Lease to other tenants in the Shopping Center.

Section 4.2 Standard of Operation and Business Hours

Tenant shall keep the Demised Premises open for business to the public during the hours that such businesses are customarily open for business, unless prevented from so doing by strikes, fires, casualty or other similar cause, and except during reasonable periods for repairing, cleaning and decorating. Nothing contained herein, however, shall require Tenant to remain open Sunday or legal holidays.

Section 4.3 Signs

Tenant shall not place any sign upon or within the Demised Premises (including window signage of any kind) without Landlord's prior written approval, which approval shall not be unreasonably withheld. Tenant shall maintain its signs in good condition and repair and shall ensure that all signs shall be lit from sundown until at least 10:00 p.m. to maintain a professional and uniform appearance in the Shopping Center. All signs shall comply with applicable ordinances, restrictions, and covenants, which compliance shall be the responsibility of Tenant.

Section 4.4 Additional Provisions

Tenant's use of the Demised Premises shall further be restricted as follows:

(A) Tenant shall not use the sidewalks, parking areas or other Common Areas in the Shopping Center for the sale or display of merchandise or for advertising purposes without Landlord's prior written approval.

(B) Tenant shall conduct no auction, fire, bankruptcy, liquidation or similar sale without Landlord's prior written approval.

(C) Tenant shall keep the Demised Premises and exterior and interior of all windows, doors and all other glass in a neat and clean condition.

(D) Tenant shall not allow any unlawful or immoral activities in the Demised Premises, create any nuisance or injure the reputation of the Shopping Center, or disturb the quiet enjoyment of other tenants of the Shopping Center.

(E) The delivery or shipping of merchandise, supplies and fixtures to and from the Demised Premises shall be subject to such reasonable rules and regulations as Landlord deems necessary for the operation of the Shopping Center.

(F) Tenant shall store all trash and garbage within the designated areas and arrange for the regular pickup of the same at Tenant's expense.

(G) Tenant shall keep the Demised Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

(H) Tenant shall provide for pest extermination services at reasonable intervals, if necessary.

(I) Tenant shall comply with the restrictive covenants that have been placed on the Shopping Center and are attached as Exhibit B.

ARTICLE V - MAINTENANCE AND REPAIRS

Section 5.1 Condition of Demised Premises

Landlord shall deliver possession of the Demised Premises to Tenant upon completion of the Landlord improvements described in the attached Exhibit A, which work is hereby approved by both Landlord and Tenant. Tenant shall obtain a building permit from the city building department for any other renovation and any other remodeling of the Demised Premises. Further, Tenant shall obtain a Certificate of Occupancy for the Demised Premises. Tenant shall deliver a copy of all building permits and Certificates of Occupancy to Landlord within five (5) days after issuance by the city building department. All renovations and any other remodeling of the Demised Premises by the Tenant shall be performed by a qualified and insured contractor, who must be first approved by the Landlord.

Section 5.2 Tenant's Duty to Repair

Except any repairs required due to the negligence of Landlord, which repairs shall be the responsibility of Landlord, Tenant shall keep and maintain in good order, condition and repair the Demised Premises and every part thereof, including (but not limited to) the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities, fixtures, the heating and air conditioning and electrical system, sprinkler system, walls, floors and ceilings, meters applicable to the Demised Premises, and all installations made by Tenant under the terms of this Lease. As part of said duty, Tenant shall contract with a reputable company to service and maintain the HVAC system and shall provide a copy of said contract to Landlord upon commencement of this Lease. Tenant shall provide Landlord HVAC unit maintenance logs on an annual basis each year of the Lease. Tenant shall keep and maintain the Demised Premises in a clean, sanitary and safe condition.

Section 5.3 Compliance with Laws

Tenant shall make, at its expense, all repairs, additions and alterations to the Demised Premises ordered or required by the adoption by any governmental authority of new statutes, regulations, laws or ordinances, whether to meet the special needs of Tenant, or due to the occupancy of Tenant, or otherwise.

Section 5.4 Alterations by Tenant

Tenant shall not alter the Demised Premises and shall not install any fixtures or equipment within the Demised Premises without prior written approval of Landlord, which approval shall not be unreasonably withheld.

Section 5.5 Landlord's Duty to Repair

Landlord shall keep and maintain the foundation, roof, exterior walls and structural portions of the Demised Premises in good repair, except any repairs required due to the negligence of Tenant, or its agents, employees, contractors, subtenants or assignees, which repairs shall be the responsibility of Tenant.

Section 5.6 Surrender of Demised Premises

At termination of this Lease, Tenant shall deliver the Demised Premises to Landlord in good and clean condition, reasonable wear and tear accepted, and shall surrender all keys for the Demised Premises to Landlord. During the last thirty (30) days of the term of this Lease, Tenant shall remove all its trade fixtures and, to the extent required by Landlord, any other installations, alterations or improvements before surrendering the Demised Premises and Tenant shall repair any damage to the Demised Premises caused thereby. Also within the last thirty (30) days, Tenant shall remove its signage from the exterior fascia of the building and shall be obligated to patch and repaint said fascia to match existing color. Any items remaining in the Demised Premises at the termination of this Lease shall be deemed abandoned, become the property of Landlord and Landlord may dispose of the same without any liability at all.

Upon Tenant's delivery of keys to Landlord, Tenant and Landlord shall complete a walk-through inspection of the Demised Premises to determine its final condition. Landlord shall also cause to be completed a review of all mechanical systems servicing the Demised Premises to verify their proper operation and shall verify that all utility and/or service bills for the Demised Premises have been paid in full. Upon verification of same, Landlord shall refund Tenant's security deposit, if applicable, less any deductions provided for in this Lease, within ten (10) business days.

Section 5.7 Mechanic's Liens

Tenant shall not permit any mechanic's liens or similar liens to be placed against the Demised Premises or the Shopping Center. If such liens are filed or threatened, Tenant shall immediately obtain a release of the lien through payment or by posting with Landlord a bond equal to two (2) times the amount of said lien with a surety reasonably satisfactory to Landlord. If the lien is not released within ten (10) days from the date of written notice from Landlord, Landlord shall have the right, at Landlord's option, to paying the lien or any portion thereof and the amounts paid, including reasonable attorney's fees, expenses and interest at the Default Rate, shall be paid to Landlord immediately. Tenant shall indemnify and hold Landlord harmless from all losses, claims, damages, costs and expenses relating to any repairs, installations or improvements to the Demised Premises made by Tenant.

Section 5.8 Roof.

Tenant shall not cut, puncture or otherwise damage the roof of the Demised Premises. Tenant shall be responsible for any damage caused to the roof by any acts of Tenant, its agents, employees, contractors, subtenants or assignees.

ARTICLE VI - INSURANCE AND INDEMNITY

Section 6.1 Tenant's Liability Insurance

Tenant shall, at its expense, keep in full force and effect a policy of public liability and property damage insurance with respect to the Demised Premises and the business operated by Tenant and any subtenants or assignees. The coverage limits of the policy shall not be less than $2,000,000 combined single limit per occurrence. The policy shall name Landlord and its mortgagee as additional insured's. The policy shall provide that the insurer shall not cancel or change the insurance without giving Landlord thirty (30) days prior written notice. A copy of the policy or a certificate of insurance shall be delivered to Landlord.

Section 6.2 Liquor Liability Insurance

In the event that at any time during the term of this lease or any extension or renewal thereof, beer, wines or other alcoholic liquors or beverages are sold or given away upon or from the Demised Premises, Tenant shall, at its sole expense, obtain, maintain and keep in force, adequate liquor liability insurance protecting both Tenant and Landlord in connection therewith with policy limits covering the full amount of potential liability provided for from time to time under the laws of this State. Said policies shall be in such companies as are authorized to write such coverage in this State, shall be acceptable to Landlord and/or its lender (which shall be named as an additional insured if requested in writing) and copies shall be maintained on file with Landlord, and shall contain non-cancelable clauses unless Landlord is given at least ten (10) days' notice of such proposed cancellation. In the event Tenant shall fail to procure such insurance where applicable, Landlord may procure the same and in the event Landlord shall be unable to procure the same (all at Tenant's expense) then sales of the foregoing products within the Demised Premises shall cease immediately.

Section 6.3 Indemnification of Landlord

Tenant shall indemnify, defend and hold Landlord harmless from all claims, demands, causes of action, actions, damages, liability, judgments or expenses, including reasonable attorney's fees and expenses, in connection with any personal injury or damage to property arising from or out of any occurrence in, upon or at the Demised Premises, or the occupancy or use of the Demised Premises or any part thereof by Tenant, its agents, employees, contractors, subtenants or assignees, or relating to any act or omission of Tenant, its agents, employees, contractors, subtenants or assignees, except if caused by the act or omission of Landlord, its agents, employees or contractors.

Section 6.4 Landlord's Liability Insurance

Landlord shall keep in full force and effect a policy of public liability and property damage insurance with respect to the Common Areas. Landlord shall determine, in its sole discretion, the coverage limits of such policy.

Section 6.5 Indemnification of Tenant

Landlord shall indemnify, defend and hold Tenant harmless from all claims, demands, causes of action, actions, damages, liability, judgments or expenses, including reasonable attorney's fees and expenses, in connection with any personal injury or damage to property arising from or out of any occurrence in, upon or at the Common Areas, except if caused by the act or omission of Tenant, its agents, employees, contractors, subtenants or assignees.

Section 6.6 Tenant's Casualty Insurance

Tenant shall, at its expense, keep all tenant improvements, merchandise, fixtures and other personal property within the Demised Premises insured against fire, with extended coverage, the extent of the full insurable value thereof. Tenant shall further, at its expense, carry machinery repair insurance with coverage limits of no less than $100,000 insuring both Landlord and Tenant against loss or liability caused by the operation or malfunction of the machinery relating to the Demised Premises, including the heating and air conditioning and electrical system. The policy shall provide that the insurer will not cancel or change the insurance without giving Landlord thirty (30) days prior written notice. A copy of the policy or a certificate of insurance shall be delivered to Landlord.

Landlord shall not be liable for any damage to any Tenant improvements, merchandise, fixtures and other personal property within the Demised Premises. Landlord shall not be liable for loss or damage to any property of Tenant or others by theft or otherwise. Landlord shall not be liable for any damage caused by other tenants of the Shopping Center, occupants of property next to the Shopping Center or the public.

Section 6.7 Landlord's Casualty Insurance

Landlord shall keep the Demised Premises insured against loss or damage by fire, with extended coverage, in such amount determined by Landlord, in its sole discretion.

Section 6.8 Increase in Fire Insurance Premium

Tenant shall not keep, use, sell or offer for sale within the Demised Premises any item that may be prohibited by the standard form of fire insurance policy. If anything done or omitted to be done by Tenant causes the rate of fire or other insurance on the Demised Premises or the Shopping Center to be increased, Tenant shall pay the amount of such increase as Additional Rent.

Section 6.9 Waiver of Subrogation

Where either Landlord or Tenant sustains a loss or damage protected by an existing policy or policies of insurance, the party sustaining such loss or damage, to the extent that it is so protected and to the extent that it may legally do so, waives its rights of recovery, if any, against the other party hereto.

ARTICLE VII - FIRE OR OTHER CASUALTY

Section 7.1 Notice

Tenant shall immediately notify Landlord of any damage caused to the Demised Premises by fire or other casualty.

Section 7.2 Partial Destruction

In the event of the partial destruction of the Demised Premises by fire or any other casualty, Landlord shall restore or repair the Demised Premises to its condition immediately before the damage with reasonable diligence. The Rent shall be reduced in direct proportion to the reduction in usefulness of the Demised Premises from the date of the damage until the Demised Premises is repaired or restored.

Section 7.3 Substantial Destruction

In the event that the Demised Premises is substantially destroyed by fire or any other casualty, Landlord shall have the option to terminate this Lease by giving Tenant written notice within thirty (30) days after such destruction, and any unearned Rent shall be apportioned and returned to Tenant. If Landlord does not elect to cancel this Lease, then this Lease shall remain in full force and effect and Landlord shall proceed with all reasonable diligence to repair and replace the Demised Premises to its condition immediately before the destruction. The Rent shall abate from the date of the destruction until the Demised Premises is repaired or restored.

ARTICLE VIII - EMINENT DOMAIN

Section 8.1 Partial Taking

If part of the Demised Premises shall be taken for public improvements or otherwise under the exercise of the right of eminent domain and the Demised Premises shall continue to be reasonably suitable for use by Tenant, then the Rent shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Demised Premises.

Section 8.2 Substantial Taking

If the taking shall render the Demised Premises wholly unfit for use by Tenant, then Tenant shall have the right, at Tenant's option, to terminate and cancel this Lease on thirty (30) days' written notice to Landlord, and Tenant shall be liable only for the Rent and Additional Rent accrued and earned to the date of surrender of possession of the Demised Premises to Landlord and for the performance of other obligations maturing before that date.

Section 8.3 Award

Tenant shall not be entitled to participate or receive any part of the damages or award that may be paid to or awarded Landlord due to a public taking, except where the award shall provide for moving or other reimbursable expenses for Tenant under applicable statute.

ARTICLE IX - ASSIGNMENT AND SUBLETTING

Section 9.1 Tenant Assignments

Tenant shall not sublet or assign the Demised Premises without Landlord's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. The approval of Landlord to any assignment or subletting shall not constitute a waiver of the necessity for approval to any subsequent assignment or subletting.

Section 9.2 Liability After Assignment

In the event that Tenant receives rent or similar payments from a subtenant or assignee more than that being paid by Tenant to Landlord, then fifty percent (50%) of such excess amounts shall be paid to Landlord as Additional Rent. Landlord may collect rent or similar charges from the subtenant or assignee and apply the net amount collected to the Rent hereunder. Notwithstanding any assignment or sublease, Tenant shall remain fully liable to Landlord under this Lease and shall not be released from performing any of the terms, covenants or conditions of this Lease.

Section 9.3 Landlord Assignments

Landlord shall have the right to freely assign its interest in this Lease without Tenant's approval or consent. Upon such assignment, Landlord shall be released from any further liability under this Lease with Tenant's consent, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE X - DEFAULT

Section 10.1 Events of Default

The occurrence of any one or more of the following shall constitute an "EVENT OF DEFAULT" by Tenant:

(A) Failure to pay when due any installment of Rent or Additional Rent if the failure continues for ten (10) days after written notice of such default.

(B) Failure to cure or remedy any default in the performance or observance of any term, provision or covenant of this Lease to be performed or observed by Tenant, other than as described in subsection (A) above, if the failure continues for twenty (20) days after written notice of such default. However, if the default cannot reasonably be cured or remedied within the twenty (20) day period, Tenant shall not be deemed to be in default if Tenant shall have diligently commenced curing such default within such twenty (20) day period and proceeds thereafter to diligently and in good faith to remedy or cure the default. In no event shall the cure take longer than sixty (60) days. If at the end of the sixty (60) day period Tenant has failed to cure the default, the Tenant shall be deemed in default without further right to cure.

(C) Abandonment of the Demised Premises before the expiration of the term of this Lease.

(D) Delinquency by Tenant in the payment of Rent or Additional Rent after more than three (3) written notices relative to similar failures during any twelve (12) month period during the term of this Lease shall be deemed an irrebuttable default without any right to cure.

(E) Tenant is adjudicated bankrupt or insolvent, or a receiver is appointed for Tenant's business or assets on the ground of Tenant's insolvency, or a trustee is appointed for Tenant, or a petition has been filed naming Tenant as the debtor under the bankruptcy laws of the United States, or Tenant shall make an assignment for the benefit of its creditors.

Section 10.2 Landlord's Remedies

Upon the occurrence of any one or more Event of Default, without notice or demand of any kind to Tenant, Landlord shall have the option to pursue, in addition to all other legal or equitable remedies, the following remedies:

(A) Landlord may elect to terminate this Lease, in which event Landlord may immediately repossess the Demised Premises and Tenant shall pay at once to Landlord, as liquidated damages, the sum of the Rent and Additional Rent for the balance of the stated term of this Lease, together with all expenses incurred by Landlord for legal services, brokerage fees and preparing the Demised Premises.

(B) Landlord may elect to terminate Tenant's right of possession of the Demised Premises without termination of this Lease, in which event Tenant shall surrender possession and vacate the Demised Premises immediately and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Demised Premises and remove Tenant and any other person, firm or corporation who may be occupying the Demised Premises and remove all personal property therefrom, without releasing Tenant from its obligation to pay the Rent and Additional Rent and perform the covenants, conditions and agreements to be performed by Tenant under this Lease.

After taking possession of the Demised Premises without terminating this Lease, Landlord may, but shall not be obligated to, relet all or any part of the Demised Premises for such rent and upon such terms and to such person, firm or corporation and for such use or uses and such period or periods as Landlord, in Landlord's sole discretion, shall determine. Landlord shall not be required to accept any prospective lessee offered by Tenant or to observe any instruction given by Tenant about such reletting. For such reletting, Landlord may decorate or make repairs, changes, alterations or additions to the Demised Premises to the extent deemed by Landlord desirable or convenient. If the consideration collected by Landlord upon any such reletting is not sufficient to pay as liquidated damages, the Rent and Additional Rent reserved in this Lease, and the cost of repairs, alterations, additions, redecorating and other similar expenses, including reasonable attorney's fees and brokerage fees, then Tenant shall pay to Landlord the deficiency upon demand. Landlord shall use reasonable efforts to mitigate damages as required by law.

Landlord, any time after the occurrence of an Event of Default, without being under any obligation to do so and without thereby waiving such default, may cure the default for the account of Tenant (and enter the Demised Premises for such purpose). Tenant shall pay to Landlord upon demand, all costs, expenses and disbursements, including reasonable attorneys' fees, incurred by Landlord in curing such default with interest thereon at the Default Rate.

ARTICLE XI - SUBORDINATION, OFFSET STATEMENT AND ATTORNMENT

Section 11.1 Subordination

Landlord is hereby irrevocably vested with the full power and authority, if it so elects, to subordinate this Lease to any mortgage, deed of trust, or other lien now or hereafter placed upon the Demised Premises or upon the Shopping Center. Within ten (10) days after request therefore by Landlord, Tenant shall execute and deliver an agreement subordinating this Lease, provided such subordination shall be upon the express condition that this Lease shall be recognized by the mortgagee, and that the rights of Tenant shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants and conditions of this Lease.

Section 11.2 Estoppel Certificate

Within ten (10) days after request therefore by Landlord, Tenant shall execute and deliver a statement certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto.

Section 11.3 Attornment

Tenant shall, in the event any proceedings are brought for foreclosure of, or upon exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Demised Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as landlord under this Lease.

Section 11.4 Attorney-in-Fact

In the event that Tenant shall fail to execute and deliver instruments pursuant to Sections 11.1, 11.2, and 11.3, then Tenant hereby appoints Landlord as attorney-in-fact for Tenant to execute any such instrument or certificate for and on behalf of Tenant.

ARTICLE XII - HAZARDOUS SUBSTANCES

Section 12.1 Landlord's Obligations

Landlord represents and warrants that, during the term of this Lease, Landlord shall not use, generate, place, store, release, or otherwise dispose of, nor allow the use, generation, placing, storage, release, or disposal of Hazardous Materials in the Shopping Center, except in strict accordance with all Environmental Laws. If, during the term of this Lease, Hazardous Materials are discovered in any portion of the Shopping Center outside the Demised Premises, Landlord shall immediately undertake or cause to be undertaken remediation or removal of the Hazardous Materials according to all Environmental Laws and, to the extent Tenant's business is interrupted during the remediation or removal, the Rent shall be abated as is fair and reasonable under the circumstances. Landlord shall indemnify, defend and hold Tenant harmless against and reimburse Tenant for all Hazardous Materials Liabilities asserted against or incurred by Tenant arising out of a breach of the representations, warranties or covenants set forth in this Section 12.1.

Section 12.2 Tenant's Obligations

Tenant represents and warrants that, during the term of this Lease, Tenant shall not use, generate, place, store, release or otherwise dispose of Hazardous Materials in the Demised Premises or Shopping Center, except in strict accordance with all Environmental Laws. In the event of a breach of the foregoing, Tenant shall immediately undertake or cause to be undertaken remediation or removal according to all Environmental Laws. Tenant shall indemnify, defend and hold Landlord harmless against and reimburse Landlord for all Hazardous Materials Liabilities asserted against or incurred by Landlord arising out of a breach of the representations, warranties or covenants set forth in this Section 12.2.

Section 12.3 Hazardous Materials Defined

The term "HAZARDOUS MATERIALS" as used herein means any substance, (i) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental Law, (ii) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, (iii) which is or becomes regulated by any Governmental Authority, or (iv) the presence of which causes or threatens to cause a nuisance to the Shopping Center or Demised Premises or to adjacent properties or Demised Premises.

Section 12.4 Environmental Laws Defined

The term "ENVIRONMENTAL LAWS" refers to all Laws relating to (i) emissions, discharges, spills, releases or threatened releases of Hazardous Materials onto land or into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, or septic systems, (ii) the use, treatments, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Materials, or (iii) the protection of human health or the environment.

Section 12.5 Hazardous Materials Liabilities Defined

The term "HAZARDOUS MATERIALS LIABILITIES" as used herein means all claims, damages, losses, forfeitures, expenses, or liabilities arising from or caused in whole or in part, directly or indirectly, by a breach by the other party of its representations, warranties, or covenants under Section 12.1 or 12.2, including (but not limited to) all costs of defense (including reasonable attorneys' fees and other costs of litigation), all consultant's fees, and all costs of investigation, repair, remediation, restoration, clean up, detoxification or decontamination, and/or preparation and implementation of any closure, remedial action or other required plan.

Section 12.6 Survival

The provisions of this Article XII shall survive the expiration or earlier termination of this Lease.

ARTICLE XIII - GENERAL PROVISIONS

Section 13.1 Landlord's Right of Entry

Landlord reserves the right, at all times during the term of this Lease, to enter the Demised Premises for inspecting and examining the same, and to show the same to prospective purchasers or tenants, and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. During the last ninety (90) days of the term of this Lease, Landlord may exhibit the Demised Premises to prospective tenants or purchasers, and place upon the Demised Premises the usual notices advertising the Demised Premises for sale or lease. If Tenant shall not be present to open and allow an entry into the Demised Premises, at any time, when for any reason entry shall be necessary or permissible, Landlord may enter by use of a master key or by forcible entry without rendering Landlord liable therefore, and without in any manner affecting the obligations and covenants of this Lease. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability at all for the care, maintenance or repair of the Demised Premises except as otherwise herein specifically provided.

Section 13.2 Quiet Enjoyment

Tenant shall lawfully and peaceable have, hold, possess, use and occupy and enjoy the Demised Premises while this Lease remains in force, without hindrance, disturbance or molestation from Landlord, subject to the specific provisions of this Lease.

Section 13.3 Trade Fixtures

At the expiration of this Lease, provided Tenant is not in default, Tenant shall have the right to remove any trade fixtures installed by Tenant at the Demised Premises. Tenant shall repair any damage to the Demised Premises caused by such removal. Notwithstanding the foregoing, Landlord shall have a lien upon the fixtures, or any additions thereto, during the term of this Lease to secure performance by Tenant.

Section 13.4 Notices

Wherever any notice is required or allowed hereunder, such notice shall be in writing. Any notice or document required or allowed to be delivered hereunder shall be deemed to be delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties hereto at the following addresses:

LANDLORD:
Badding Construction Company
Nick Badding, President
814 West 9th Street
Carroll, Iowa 51401

With a copy to:
Neu Minnich Comito Halbur Neu
& Badding, P.C.
Gina C. Badding
721 N Main Street
Carroll, Iowa 51401

TENANT:
City of Carroll
Mike Pogge-Weaver, City Manager
112 E 5th St
Carroll, IA 51401

With a copy to:
Bruner Bruner & Reinhart
David S. Bruner
225 E 5th St #2
Carroll, IA 51401

Section 13.5 Holding Over

In the event Tenant, with Landlord's consent, remains in possession of the Demised Premises after the expiration of this Lease and without execution of a new Lease, it shall be deemed to be occupying said Demised Premises as a tenant from month to month as set forth in Section 3.2, and otherwise subject to all the terms, covenants and conditions of this Lease.

Section 13.6 Partial Invalidity

If any term or condition of this Lease shall to any extent be invalid and unenforceable, then the remainder of this Lease, other than those to which it is held invalid or unenforceable, shall not be affected and each term, covenant and condition of this Lease shall be valid and be enforced to the fullest extent allowed by law.

Section 13.7 Waiver

Waiver of any default, breach or failure under this Lease shall not be construed as a waiver of any subsequent or different default, breach or failure.

Section 13.8 Amendment

All amendments to this Lease shall be in writing executed by the parties.

Section 13.9 Successors

The provisions, covenants, and conditions of this Lease shall bind and inure to the benefit of the legal representatives, successors and assigns of each party. Landlord shall have the right to assign this Lease and be released therefrom upon the sale of the Demised Premises.

Section 13.10 Choice of Law

The laws of the State of Iowa shall govern interpretation, validity, performance and enforcement of this Lease.

Section 13.11 Superseding Lease

This Lease supersedes all previous leases or other agreements between the parties hereto concerning the Demised Premises.

ARTICLE XIV - GOVERNMENTAL APPROVALS

Section 14.1 Governmental Approval Changes

Landlord shall have the right to modify the site plan for the Shopping Center, the design of the buildings within the Shopping Center, including (but not limited to) the Premises, or otherwise modify matters relating the Shopping Center in connection with the governmental approvals required for Landlord's intended development and use of the Shopping Center.

SIGNATURE

DATED this ____ day of December, 2017.

LANDLORD:

BADDING CONSTRUCTION COMPANY,
an Iowa corporation

By: _____
Nick Badding, President

TENANT:

CITY OF CARROLL, IOWA

By: _____
Eric P. Jensen, Mayor

ATTEST:

By: _____
Laura A. Schaefer, City Clerk

EXHIBIT A

CITY OF CARROLL – CARROLL PUBLIC LIBRARY
LEASE SITE SPECIFICATIONS

Site shall refer to both the land and building, including parking facilities and furnishings.

A. **Site(s) must be with the City of Carroll or within 0.5 miles from the Carroll City Limits.**
   a. Depot Business Center is centrally located within Carroll's Business District.

B. **Site(s) should be located in a highly visible and easily accessible area.**
   a. Depot Business Center is highly visible from US Highway 30, Northwest Street, West 5th and West 6th Street.
   b. Various restaurants and retail businesses are located at the Depot Business Center. Collectively they bring hundreds of people to the Center on a daily basis.
   c. The Center is within walking distance of our entire Central Business District and is easily accessible from Highway 30, Northwest Street, 5th Street and 6th Street.

C. **Downtown Commercial Area is highly desirable.**
   a. Depot Business Center is centrally located within Carroll's Downtown Commercial District.

D. **Site must be available for lease for a minimum of two (2) years. The initial term <u>for the Library only</u> shall be for a period of eighteen (18) months and subject to automatic month to month renewal at the end of the initial term unless the City of Carroll provides written notice of intent to terminate the agreement at least thirty days prior to the end of the term of the lease.**
   a. An eighteen (18) month lease with month to month renewal after the initial term is acceptable.

E. **Site must be available for lease and occupancy by July 1, 2018.**
   a. Site will be available for lease on or before July 1, 2018.

F. **Site must meet any and all existing codes.**
   a. Site meets all existing codes.

G. **Site must meet ADA requirements**
   a. Site meets ADA requirements.

H. **Site must be suitable for public use as a Library facility.**
   a. Site is suitable for public use as a Library facility.

I. **Building structure for the library space must be able to support a full load of books placed on standard library shelving throughout the facility. Typically, this requires a floor load of at least 150 lbs. per sq. ft.**
   a. Floor structure is adequate for library shelving loading requirements.

J. **Site must have adequate lighting.**
   a. New lighting will be installed throughout the space to provide ample, efficient lighting. Emergency exit signs/lighting will be provided at all exit doors.

K. **Site must have adequate air conditioning and heat.**
   a. New roof top heating, ventilating and air conditioning units will be installed to provide comfortable and efficient air conditioning and heating. Units will be zoned to control temperature throughout the space.

L. **Site must have electrical and telephone capacity suitable for Library computer and telecommunications equipment.**
   a. New electrical service will be installed with outlets installed to meet the needs of the Library. Data junction boxes will be installed for City of Carroll supplied data/communication wiring.

M. **Building size requirements.**
   a. **Library - Commercial rental facility with a minimum of 8,000 square feet of space. Larger spaces will be considered.**
      i. The space within the Depot Business Center will be approximately 8,401 square feet per the attached floor plan.

N. **Parking requirements**
   a. **Library - Must have a minimum of 35 parking spaces near the building.**
      i. The site has more than the requested 35 parking spaces but to help facilitate parking in the area an additional 15 spaces will be added along the north/south frontage road per the attached site plan.

O. **Proposal shall list all property owners and the Management Company (if any).**
   a. The Depot Business Center is owned and managed by Badding Construction.

P. **Proposal shall include plat and plans.**
   a. A floor plan, site plan and plat are included as attachments.

Q. Proposal shall include an all-inclusive monthly rental price, inclusive of common area maintenance (CAM) for the initial term and the following month to month renewal term.

a. The all-inclusive monthly rental price for the 8,401 square feet located at the Depot Business Center will be Four Thousand Seven Hundred Twenty-Five Dollars ($4,725.00) per month.

b. The all-inclusive rental fee includes base building rent, property taxes, building insurance, water/sewer usage and common area maintenance. Common area maintenance includes snow removal, lawn care, maintenance of parking lot, sidewalks, exterior building façade, roof and mechanical equipment.

R. Proposals need to specify if the following utilities/services are included in the lease cost. These utilities/services include: 1) electric, 2) gas, 3) water, 4) sewer, and 5) trash. If they are not included, proposal are asked to include information on the expected cost for each utility/service.

a. The following services will be the responsibility of the Landlord
   i. Water and sewer

b. The following services will be the responsibility of the Tenant
   i. Electricity, gas, trash

S. The building owner is responsible to meet all requirements of the building code including, but not limited to, ADA access, required number of restrooms, and fire protection. The City understands that due to the temporary nature of the proposed use(s), that the requirement to install or have a fire sprinkler system can be waived under provisions in the building code. The owner is responsible for understanding all building code requirements as they apply to their building and the proposed uses. Questions on the building code should be directed to Greg Schreck at 712-792-1000.

a. The Depot Business Center site will meet ADA access requirements.

b. Two restroom facilities will be provided. A Women's with two (2) toilets and a Men's with one (1) toilet and one (1) urinal. Both restrooms will meet ADA requirements.

c. The existing fire sprinkler system will remain as is. Horn/strobe alarms will be installed. All demising walls will be insulated, one hour rated construction.

d. The site will meet building code exiting requirements.

T. Responses to the RFP shall indicate the level of finishes the building will offer. Due to the temporary nature of the lease, the City understands the need to balance the cost of a finished space with the budgetary constraints of a short-term lease. Finishes will be considered as part of the site suitability section of the evaluation. Some items to consider and the City will accept:

a. Ceiling

i. The existing open ceiling structure will remain as is.

b. Walls

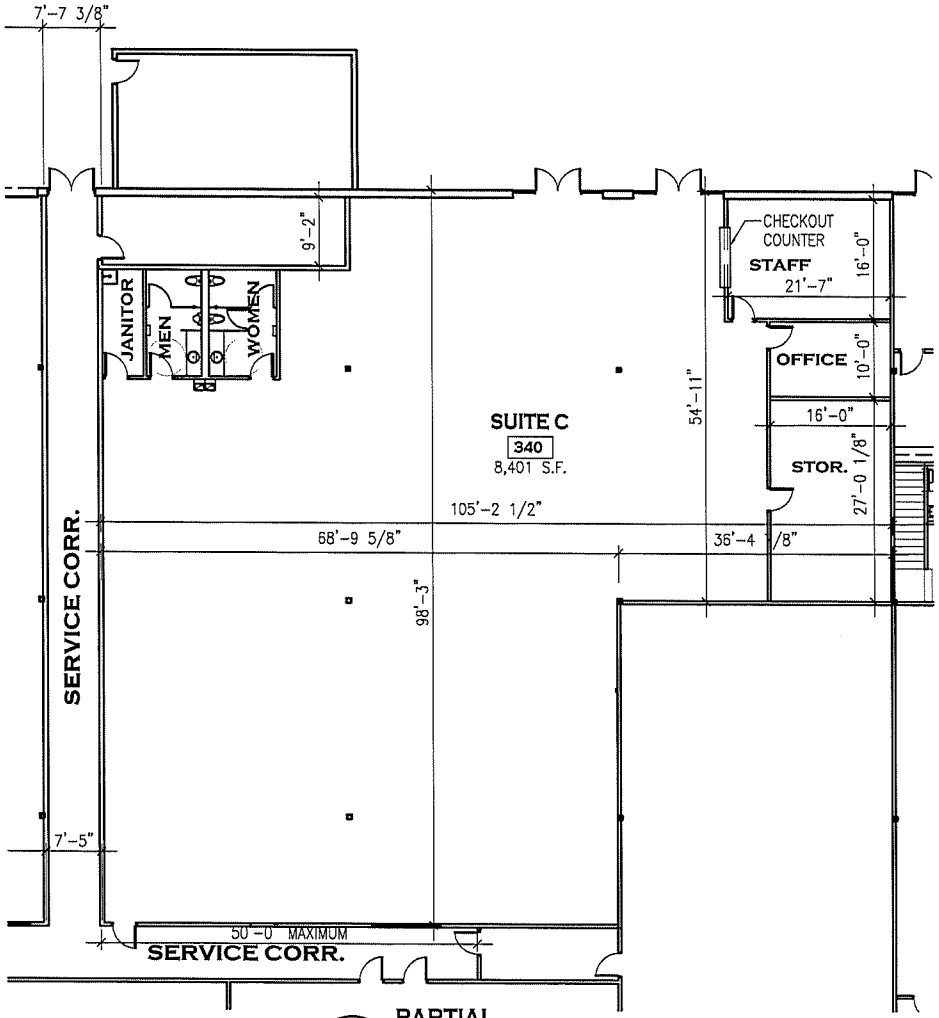
i. All walls will be insulated, finished drywall and painted.

c. Flooring

i. Existing floors will be sealed concrete with City of Carroll applied flooring in locations deemed appropriate. Vinyl base will be installed at all walls. Restrooms will have sheet vinyl flooring and vinyl base installed.

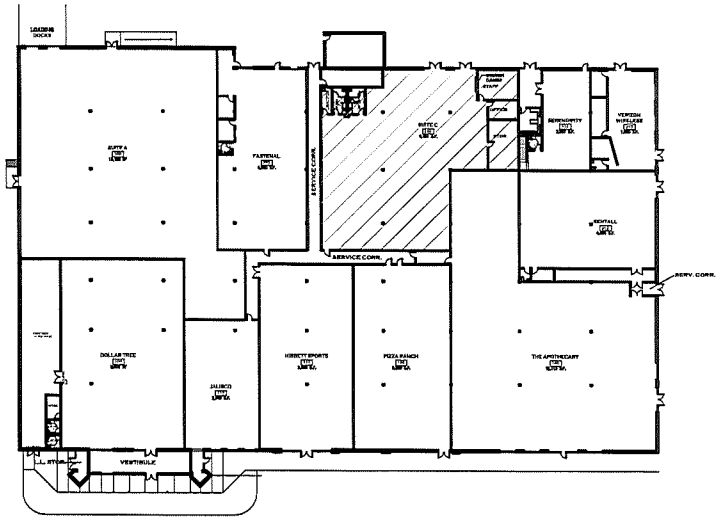
d. Additional Improvements

i. Landlord shall provide additional improvements including circulation area, office and book storage. New area to include painted drywall walls, check-out counter, doors and acoustical ceiling in office and circulation room.



1 PARTIAL FLOOR PLAN
SCALE: 1/16" = 1'-0"

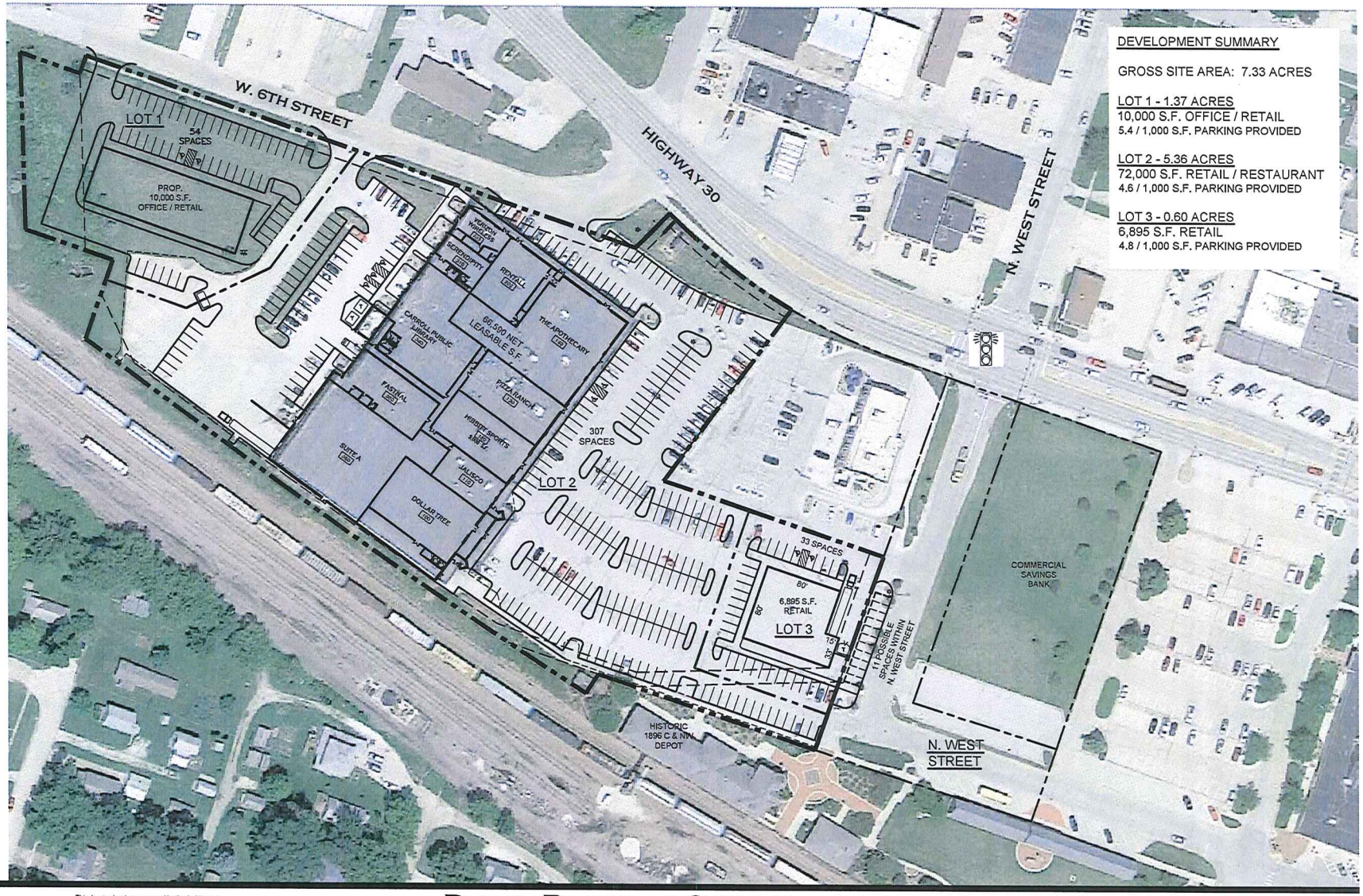
2 PARTIAL EXT. ELEVATION
SCALE: 1/16" = 1'-0"



3 OVERALL FLOOR PLAN
SCALE: 1/64" = 1'-0"

CITY OF CARROLL TEMPORARY LIBRARY SPACE
DEPOT BUSINESS CENTER
425 US HIGHWAY 30
CARROLL, IA
12-13-2017

simon
simonson & associates ar
2717 ingersoll avenue suite 117 des m
phn 515 440 5626 www.simo



BADDING CONSTRUCTION
Carroll, Iowa

This drawing has been prepared by the Architect, or under the Architect's direct supervision. This drawing is intended to be conceptual in nature only. Property boundaries, setbacks, easements, topography, utilities, structures and other physical features shown herein are based on the information available to the architect at the time of design. This document reflects a site plan concept only, and does not necessarily reflect all governing authority requirements, including green space calculations, bulk regulations, landscaping, storm water management, city input, site signage, grading, and other factors that may impact final site design. This drawing shall not be used for construction or legally binding documentation. (C) Copyright 2017 by Simonson & Associates Architects, L.L.C.

DEPOT BUSINESS CENTER

SITE PLAN
CARROLL, IOWA

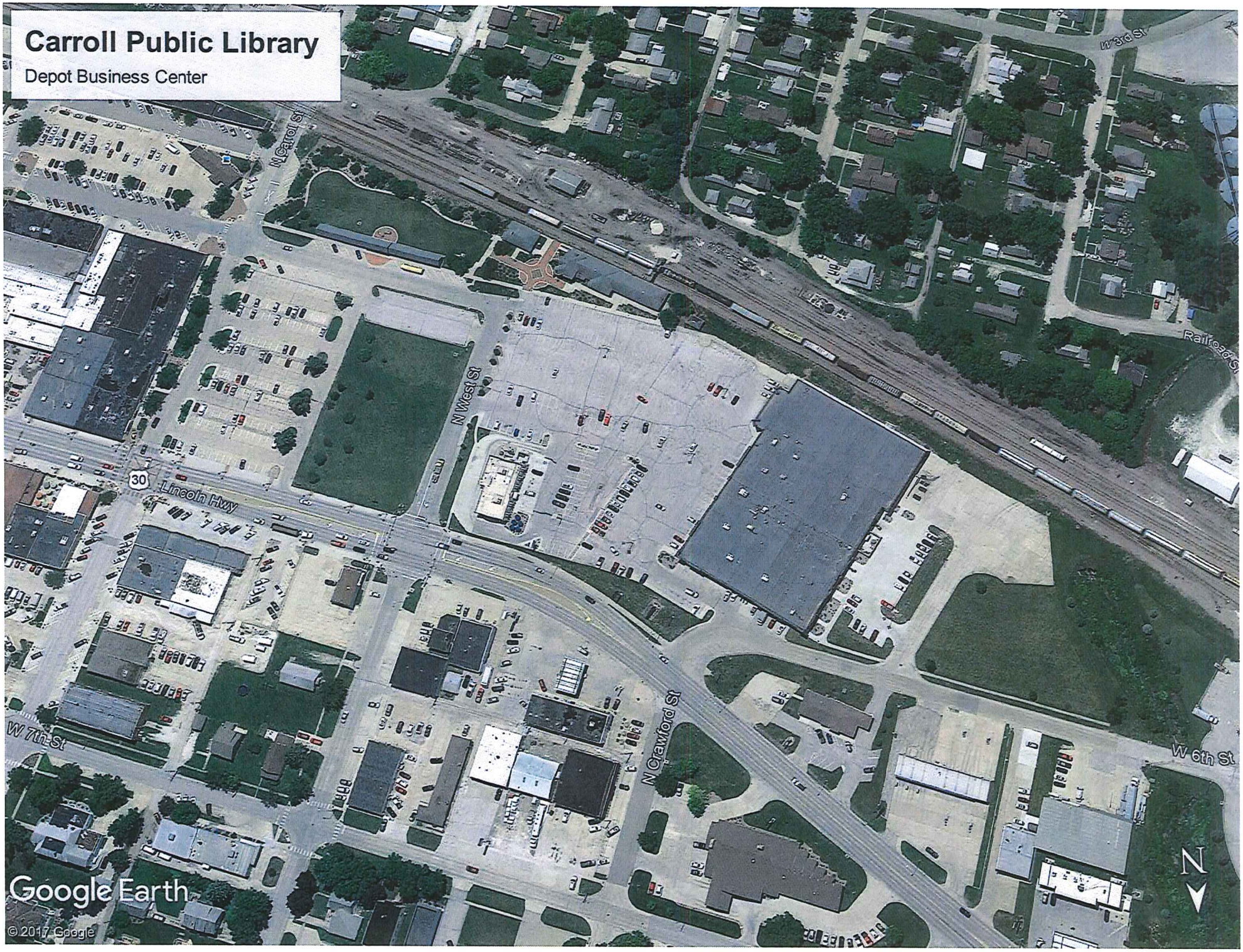
SEPTEMBER 26, 2017

NORTH

1" = 100'-0" @ 11"x17" Sheet
SAA# 07155
DRAWN BY: AVC

0' 50' 100'

simonson
simonson & associates architects LLC
1717 ingersoll avenue suite 117 des moines ia 50309
phn 515 440 5626 www.simonsonassoc.com


Carroll Public Library
Depot Business Center
N Carroll St
N West St
30
Lincoln Hwy
W 7th St
N Crawford St
W 6th St
Railroad St
Google Earth
© 2017 Google
N

Carroll Public Library
Depot Business Center
N Crawford St
Lincoln Hwy 30
N West St
Railroad St
N Adams St
W 5th St
N Carroll St
W 4th St
N
Google Earth
© 2017 Google

PIN 06-24-379-017
Address 425 US HWY 30
Owner BADDING CONSTRUCTION COMPANY
Class COMMERCIAL

CellOnly / Premium Retailer
Serendipity

Serendipity
THE
OFFICE/RETAIL
SPACE
FOR
LEASE
639-WSG

EXHIBIT B

RESTRICTIVE COVENANTS—Depot Business Center Use Restrictions

- From the Restrictive Covenant between Wal-Mart Corporation (Seller) and Badding Construction Company (Purchaser):

  COVENANTS, CONDITIONS, AND RESTRICTIONS. (a) Purchaser covenants that the Property will not be used for or in support of the following: (i) a grocery store or supermarket, as hereinafter defined below, (ii) a wholesale club operation similar to that of a Sam's Club owned and operated by Wal-Mart, (iii) a discount department store or other discount store, as hereinafter defined, or (iv) a pharmacy (the "Property Restrictions"). "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 35,000 square feet of gross leasable area, for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments, "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 50,000 square feet of gross leasable area, for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, lawnmowers, toys, health and beauty aids, hardware items,
  bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart. Notwithstanding the foregoing, the Property Restrictions shall not apply to Wal-Mart Stores, Inc. or any parent company, affiliate, subsidiary, or related company. (b) The Property Restrictions shall survive the Closing and remain in effect for a period of twenty-five (25) years. The aforesaid Property Restrictions shall run with and bind the Property and shall inure to the benefit of and be enforceable by Seller, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent violations of such aforesaid Property Restrictions or to recover damages for such violations.

- From that certain Lease Agreement between Appliance & Furniture RentAll, Inc. (Lessee) and Badding Construction Company (Lessor):

  - Lessor agrees to give Appliance & Furniture RentAll, Inc., the exclusive right to operate a rental/leasing business in the Depot Business Center and will not lease space to any other tenant who rents and/or leases the above mentioned items.

- From that certain Lease Agreement between Hibbett Sporting Goods, Inc. (Lessee) and Badding Construction Company (Lessor):

    - Landlord shall not use or permit the use of any portion of the Center as any of the following: massage parlor; "adult book or video store" or similar business catering to pornographic interests; amusement center or game room (featuring, without limitation, pinball, electric and video game machines); bowling alley; tire, battery or auto parts retail location; skating rink; head shop; off-track betting facility; billiard parlor; gyms and exercise facilities; automobile leasing facility; rent-to-own, check cashing, business operation generally referred to as a "flea market"; night club; comedy club; country and western bar; teenage facility; dance hall; bingo parlor; or a close-out, thrift, good will or similar store such as "Big Lots", "Bud's" or "Odd Lots".

    - All space in the Center shall be used for retail, service and office (not municipal-type) use, in accordance with the high standards of a first class shopping center and Landlord shall maintain in the Center a mix of tenants as will best serve the interest of all tenants; provided such office use shall be limited to space facing the west side of the Center. Notwithstanding the foregoing, Landlord shall not permit any other tenant or other user in the Center to conduct the Exclusive Use (defined below) either as its principal use or within a kiosk or in an area exceeding the lesser of one thousand (1,000) square feet or more than twenty percent (20%) of such other tenant's respective premises, sales or inventory ("Exclusive Covenant"); the measurement of such other tenant's respective premises shall include any and all racks, tables, displays, etc and the area used to access these by the customer. For purposes hereof, the Exclusive Use shall be defined as the retail sale of sporting goods, athletic apparel, athletic shoes or sports fan licensed products. Further, tenants such as, for purposes of example and not in limitation, Encore Stores, Lids, Lids Team Sports, Lids Locker Room, Genesco, Foot Locker, Finish Line, Shoe Department, Shoe Show, Rack Room, Sports Chalet, Sportsman's Warehouse, MC Sports, Dunham's, Shoe Carnival, Champs, Cabelas, REI, Play it Again Sports, Gander Mountain, Big 5, Dick's, Sports Authority and Academy will be a violation of this provision. Further still, "athletic shoes", as used in the Exclusive Use, shall include, but not be limited to, any shoe whatsoever made or branded by: Adidas, Adio, Airwalk, American Eagle, And1, Apple Bottoms, Asics, Avia, Bearpaw, Black Label, Body Glove, Brooks, Champion, Choco, City Sneaks, Colombia, Clarks, Converse, Coogi, Crocs, Cross Treckers, DC, Diadora, Dunkman, Ecko, Easton, Etnies, Fila, Guy Harvey, Heely's, Hi-Tec, Jordan, Kaepa, K-Swiss, Keds, Keens, LA Gear, Lacoste, Lugz, Kiskeen, Mark Ecko, Merrell, Mizuno, New Balance, Nike, Oakley, Pearl Izumi, Polo, Predictions, Puma, Quiksilver, Rainbow, Reebok, Rocawear, Rockport, Rugged Outback, Russell, Ryka, Saucony, Skechers, Sperry, Steve Madden, Stride Rite, Tapout, Teva, The North Face, Timberland, Umbro, Under Armour, Vans, Wilson, Zodiac, Zoo York. Notwithstanding the foregoing, all existing tenants as of the Effective Date shall be excepted from the Exclusive Covenant provided such existing tenants maintain their current use and product mix.

- From that certain Lease Agreement between Dollar Tree Stores, Inc. (Lessee) and Badding Construction Company (Lessor):

    - Landlord shall not lease, rent or occupy, or permit to be leased, rented or occupied, any portion of the Shopping Center for the operation of a single price point variety retail store or any other retail store the Principal Business of which is the operation of a single price point variety retail store.

    - Landlord will not permit any occupant of the Shopping Center to operate their premises for any of the following uses without the prior written consent of Tenant, which consent may be withheld by Tenant in its sole and absolute discretion:
        - Variety retail operations with the word "Dollar" or any derivation, abbreviation, slang, symbol or combination thereof (or their respective equivalents in any other language) in their trade name; or

        - A store whose Principal Business is the sale of merchandise which is classified as "close-out", "odd lot", "clearance", "discontinued", "cancellation", "second", "floor model", "demonstrator", "obsolescent", "over stock", "distressed", "bankruptcy", "fire sale" or "damaged"; or

        - A store whose Principal Business is selling a combination of gifts, cards, gift wrap and other party supplies; or

        - An arts & crafts store or a store whose Principal Business is selling a combination of craft supplies, art supplies, artificial flowers, picture frames and scrapbooking supplies; or

        - A non-membership warehouse store less than 30,000 square feet that sells restaurant supplies, janitorial supplies and related items; or

        - A store whose Principal Business is selling a variety of general merchandise at a price not to exceed $5.00, provided that such limitation on price is a part of the regularly advertised attributes of such store; or

        - Any of the uses described on Exhibit F attached hereto; provided, however, that the restrictions related to the Restricted Uses described on Exhibit F attached hereto shall be limited to the Front Facing Tenants and shall expressly not apply to the remainder of the Shopping Center.

Exhibit F from Lease Agreement between Dollar Tree Stores, Inc. (Lessee) and Badding Construction Company (Lessor)

Restricted Uses

Any one or more of the following uses:

1. A flea market;
2. A pawn shop;
3. A bar, pub, nightclub, music hall or disco in which less than 50% of the space or 50% of the revenue is devoted to and derived from food service;
4. A bowling alley, billiard, pool or bingo parlor;
5. An arcade, pinball or computer game room (provided that retail facilities which are otherwise not prohibited or restricted may operate no more than six (6) such electronic games incident to their primary business);
6. A facility for the sale or rental of used goods (including thrift shops, secondhand or consignment stores);
7. A training or educational facility (including, without limitation, a beauty school, barber college, reading room, driving school, or other facility catering primarily to students or trainees rather than customers);
8. A massage parlor (which shall not be construed to mean a business of the type commonly referred to as a "day spa");
9. A funeral home;
10. A gymnasium, sport or health club;
11. A facility for the sale of paraphernalia for use with illicit drugs;
12. A marijuana dispensary;
13. A facility for the sale or display of pornographic material;
14. A lingerie bar, "go go" bar or other similar establishment;
15. A Laundromat;
16. An off-track betting parlor;
17. A carnival, amusement park or circus;
18. A gas station, car wash or auto repair or body shop;
19. A facility for the sale of new or used motor vehicles, motorcycles, trailers or mobile homes;
20. A skating rink;
21. A banquet hall, auditorium or other place of public assembly;
22. A hotel or residential facility;
23. A theater of any kind; or
24. Other non-retail uses except for office or storage facilities incidental to a primary retail operation;

This instrument prepared by:
Wal-Mart Realty Company
Sam M. Walton Development Complex
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attn: Brad Rogers, Asst. General Counsel
(479) 273-4216

When recorded return to:
Stewart Title Guaranty Company
Two North LaSalle Street, Suite 1400
Chicago, IL 60602
Attn: Stephanie Natalino

STATE OF IOWA
County of Carroll
As Inst No. 2009-2581
Filed for record on June 25, 2009
at 12:30 o'clock P M and recorded in
Book 2009 Page 2581
Fee $ 32.00 Marilyn Dopheide Co. Recorder
4 Pages

STATE OF IOWA

COUNTY OF CARROLL

MODIFICATION OF DEED RESTRICTIONS

THIS MODIFICATION OF DEED RESTRICTIONS (this **"Modification"**), dated June 11, 2009, is executed and delivered by **WAL-MART REALTY COMPANY**, an Arkansas corporation (**"Wal-Mart"**), in favor of **BADDING CONSTRUCTION COMPANY**, an Iowa corporation (**"Badding"**).

RECITALS

A. By Special Warranty Deed dated June 3, 2008, and recorded in Book 2008 at Page 2257 in the County Clerk's Office for Carroll County (the **"Deed"**), Wal-Mart conveyed to Badding a parcel of real property located in the City of Carroll, Iowa, more particularly described on Exhibit "A" attached hereto (the **"Property"**).

B. Pursuant to the Deed, Wal-Mart subjected the Property to certain use restrictions, which are more particularly set forth in the Deed (the **"Restrictions"**), and retained the right to enforce the Restrictions for a period of twenty-five (25) years from the date of recording of the Deed. The Restrictions prohibit certain types of retail uses on the Property.

C. Badding has requested Wal-Mart to execute this Modification in order to modify one of the types of retail uses on the property.

MODIFICATION OF RESTRICTIONS

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth below, Wal-Mart and Badding agree for themselves, and their respective successors, affiliated companies and assigns, as follows:

1. The Restrictions contained in the Deed are amended to provide that they shall not apply to a pharmacy use on the Property up to 15,000 square feet. Notwithstanding anything contained herein, a drive-thru pharmacy of any size is prohibited on the Property.

2. Except as expressly modified by this Modification, the Restrictions set forth in the Deed shall continue in full force and effect, and are hereby ratified by the parties.

Carroll, Iowa
Store #V1787

3. This Modification has been entered into, and shall be construed in accordance with, the laws of the State of Iowa. This Modification sets forth the entire agreement of the parties with respect to the matters set forth herein, and supersedes any prior written or oral understandings between the parties with respect to those matters.

IN WITNESS WHEREOF, Wal-Mart and Badding have executed this Modification of Restrictions as of the day and year first above written.

ATTEST:

By: _____
Name: Ramona L. West
Title: Assistant Secretary

WAL-MART REALTY COMPANY, an Arkansas corporation

By: _____
Name: R.O. Kinnard
Title: Vice-President, Realty Disposition and Appraisal

STATE OF ARKANSAS)
)SS
COUNTY OF BENTON)

In the State of Arkansas, County of Benton, on this 28th day of May, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared ~~Carole J. Baker~~ R.O. Kinnard, to me personally known, who being by me duly sworn did say that she is the ~~Senior Director of Building Development~~ Vice-President, Realty Disposition & Appraisal of the Grantor corporation in the foregoing modification of deed restrictions, and that the seal thereto affixed is the corporate seal of said corporation and that said modification of deed restrictions was signed and sealed in behalf of said corporation by authority of its Board of Directors and said ~~Carole J. Baker~~ R.O. Kinnard acknowledged said modification of deed restrictions to be the free act of said corporation.

WITNESS my hand and notarial seal subscribed and affixed in said county and state, the day and year in this certificate above written.

Notary Public:
Paula A. Seay
Paula A. Seay

My Commission Expires: 6/1/2012

"NOTARY SEAL"
Paula A. Seay, Notary Public
Benton County, State of Arkansas
My Commission Expires 6/1/2012

C-1099692v1 17165.00018

BADDING CONSTRUCTION COMPANY, an Iowa corporation

By: BADDING CONSTRUCTION COMPANY, an Iowa corporation

By: _____
Name: Nick Badding
Title: President

STATE OF Iowa)
)§§
COUNTY OF Carroll)

In the State of Iowa, County of Carroll, on this 11 day of June, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Nick Badding, to me personally known, who being by me duly sworn did say that he/she is the President of Badding Construction Company in the foregoing modification of deed restrictions, and that the seal thereto affixed, if any, is the corporate seal of said corporation and that said modification of deed restrictions was signed and sealed in behalf of said corporation by authority of its Board of Directors and said Nick Badding acknowledged said modification of deed restrictions to be the free act of said corporation.

WITNESS my hand and notarial seal subscribed and affixed in said county and state, the day and year in this certificate above written.

Notary Public:

LOIS PETERSON
Commission Number 716749
MY COMMISSION EXPIRES
9-27-11

Lois Peterson

My Commission Expires: 9-27-11

C-1099692v1 17165.00018

3

Exhibit "A"

Lot 5, Block 1, Midwest Towne Subdivision to Carroll, Carroll County, Iowa, EXCEPT that portion of Lot 5 lying South of the Southerly right-of-way of Fifth Street extended Westerly and lying East of the Northerly extension of the Westerly line of Lot 3 of said Block 1.