

DRAFT AIA® Document C103® – 2015

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

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

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

« Southcentral Foundation »« »
« 4501 Diplomacy Drive »
« Anchorage, Alaska 99508 »
« »

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

« »« »
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« »

Consultant's discipline:

« »

for the following Project:
(Name, location and detailed description. Time limits for bringing claims in Section 6.1.1 are tied to completion of the "Project." The "Project" may be limited to the scope of services to be provided by the Consultant, or the Consultant may be providing services for a "Project" involving design and construction of one or more structures. Care should be taken in describing or defining the Project.)

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The Owner and Consultant agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document does not contain a description of the Consultant's scope of Services. This document is intended to be used in conjunction with AIA Standard Form of Consultant's Services documents.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1:

(State below Initial Information, such as details of the Project's site and program; identity of the Architect, Owner's contractors and other consultants, and Consultants' subconsultants; anticipated procurement method; and other information relevant to the Consultant's Services.)

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§ 1.2 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201™–2007, General Conditions of the Contract for Construction.

§ 1.3 The Owner's anticipated design and construction schedule:

- .1 Design phase milestones, if any:

« »

- .2 Date for commencement of construction:

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- .3 Substantial Completion date:

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- .4 Other milestone dates:

« »

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

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall provide the following professional services:

(Describe the scope of the Consultant's services or identify an exhibit or scope of services document setting forth the Consultant's services and incorporated into this document in Section 11.2.)

« »

§ 2.2 The Consultant shall perform its services consistent with the professional skill and care ordinarily provided by professionals in the same discipline practicing in the same or similar locality under the same or similar circumstances. The Consultant 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 Consultant identifies the following representative who is authorized to act on behalf of the Consultant with respect to the Project.

(List name, address, and other information.)

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§ 2.4 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Agreement, or shall cause such services to be performed by appropriately licensed professionals.

§ 2.5 The Consultant shall coordinate its services with those services provided by the Owner and the Owner's other consultants. The Consultant may communicate with the Owner's other consultants for the purposes of performing its services on the Project. The Consultant shall keep the Owner reasonably informed of any such communications. The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's other consultants. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any error, omission, or inconsistency in such services or information.

§ 2.6 The Consultant shall keep the Owner reasonably informed of the progress of the Consultant's services.

§ 2.7 **Insurance.** The Consultant 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 Consultant normally maintains, the Owner shall reimburse the Consultant for any additional cost as set forth in Section 8.6.3.~~

§ 2.7.1 Commercial General Liability with policy limits of not less than « one million dollars » (\$ « 1,000,000 ») for each occurrence and « two million dollars » (\$ « 2,000,000 ») in the aggregate for bodily injury and property damage.

§ 2.7.2 Automobile Liability covering vehicles owned by the Consultant and non-owned vehicles used by the Consultant with policy limits of not less than « one million dollars » (\$ « 1,000,000 ») per claim and « one million dollars » (\$ « 1,000,000 ») in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.7.3 The Consultant may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than « one million dollars » (\$ « 1,000,000 »).

§ 2.7.5 Professional Liability covering the negligent acts, errors and omissions in the performance of professional services with policy limits of not less than « one million dollars » (\$ « 1,000,000 ») per claim and « two million dollars » (\$ « 2,000,000 ») in the aggregate.

§ 2.7.6 The Owner shall be an additional insured on the Consultant's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Consultant shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

§ 2.8 Time. The Consultant shall provide its services within the time limits established in the Consultant's Schedule, or within the Deliverable(s) Time Limit(s) set forth below. The Consultant shall immediately inform the Owner of any circumstances which may cause a delay.
(Check one or both selections below.)

[« X »] Consultant's Schedule: As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Owner's approval, a schedule for the performance of the Consultant's Services. If relevant to the Consultant's Services, the schedule initially shall include anticipated dates for design phase milestones, 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 Consultant or Owner.

[« »] Deliverable(s) Time Limit: The Consultant shall provide the following deliverable(s) within the time limit(s) set forth below. Unless otherwise indicated below, time shall be calculated based on calendar days from the date of this Agreement.

Deliverable(s) (Describe the deliverable(s))	Time Limits (Insert number of calendar days and, where appropriate, if time is to be measured from a separate written authorization from the Owner)

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 Additional Services may be provided after execution of this Agreement without invalidating the Agreement.

§ 3.2 The Consultant shall promptly notify the Owner upon recognizing the need to perform Additional Services. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Owner's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 3.2 shall entitle the Consultant to compensation pursuant to Section 8.2.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project. Within 15 days after receipt of a written request from the Consultant, the Owner shall furnish the requested information as necessary and relevant for the Consultant to evaluate, give notice of, or enforce lien rights.

§ 4.2 The Owner identifies the following representative who is authorized to act on the Owner's behalf with respect to the Project.

(List name, address, and other information.)

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§ 4.3 The Owner shall render decisions and approve the Consultant's submittals, if any, in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 4.4 The Owner shall coordinate the services of its other consultants with those services provided by the Consultant. The Owner shall provide the Consultant with a list of other consultants on the Project whose services relate to the Consultant's services. The Owner shall also, upon written request, furnish the Consultant with copies of the scope of services in contracts between the Owner and such other consultants. The Owner shall require that its other consultants maintain professional liability insurance as appropriate to the services provided.

§ 4.5 The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Consultant to furnish them as an Additional Service, when the Consultant requests such services and demonstrates that they are reasonably required for the Consultant to be able to perform its services.

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

ARTICLE 5 COPYRIGHTS AND LICENSES

§ 5.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Consultant and the Consultant's subconsultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials in digital or physical form.

§ 5.2 The Consultant 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 Consultant 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 or comply with protocols established for the Project, if any.

§ 5.3 The Consultant and the Consultant's subconsultants shall be deemed the authors and owners of their respective Instruments of Service 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 Consultant's subconsultants.

§ 5.4 Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive license to use the Consultant's Instruments of Service solely and exclusively for purposes of designing, 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 Consultant shall obtain similar nonexclusive licenses from its subconsultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Owner's consultants and contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for the purposes of designing, constructing, using, maintaining, altering and adding to the Project. If the Consultant rightfully terminates this Agreement for cause as provided in Section 7.4, the license granted in this Section 5.4 shall terminate.

§ 5.4.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Consultant and the Consultant's subconsultants 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 Consultant and its subconsultants 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 5.4.1. The terms of this Section 5.4.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 7.4.

§ 5.5 Except for the licenses granted in this Article 5, 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 Consultant. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and the Consultant's subconsultants.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 The Owner and Consultant 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 the Project is sufficiently complete so that the Owner can utilize it for its intended use. The Owner and Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.~~

§ 6.1.2 To the extent damages are covered by property insurance, the Owner and Consultant 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. The Owner or the Consultant, 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.

§ 6.1.3 The Consultant 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 7.7.

§ 6.2 ~~Mediation~~Dispute Resolution

§ 6.2.1 ~~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 Consultant's services, the Consultant 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.~~

~~§ 6.2.2 The Owner and Consultant 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.~~

~~§ 6.2.3 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.~~

~~§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the~~The method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Consultant 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 6.3 of this Agreement~~

[« X »] Venue for any action shall be in the federal or state courts at Anchorage, Alaska, and the parties hereby consent to such venue and the jurisdiction of such courts. ~~Litigation in a court of competent jurisdiction~~

[« »] Other: (Specify)

« »

§ 6.3 Arbitration

~~§ 6.3.1 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.~~

~~§ 6.3.1.1 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.~~

~~§ 6.3.2 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.~~

~~§ 6.3.3 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.~~

§ 6.3.4 Consolidation or Joinder

~~§ 6.3.4.1 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).~~

~~§ 6.3.4.2 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.~~

~~§ 6.3.4.3 The Owner and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Consultant under this Agreement.~~

ARTICLE 7 TERMINATION OR SUSPENSION

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

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

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

§ 7.4 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.

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

§ 7.6 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with pre-approved Reimbursable Expenses then due and all Termination Expenses as defined in Section 7.7.

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

§ 7.8 The Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 5 and Section 8.7.

ARTICLE 8 COMPENSATION

§ 8.1 The Owner shall compensate the Consultant for services described in Article 2 as follows:

(Insert amount of, or basis for, compensation)

- « »

§ 8.2 The Owner shall compensate the Consultant for Additional Services that may arise during the course of the Project as follows:

(Insert amount of, or basis for, compensation.)

« The basis of compensation for Additional Services will be negotiated at the time of proposed Additional Services and based on hourly rates as shown in 8.3. »

§ 8.3 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' normal review practices.

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

« »

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

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

« zero » percent (« 0 » %) ↔

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

§ 8.6 Reimbursable Expenses

§ 8.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's professional services and include expenses incurred by the Consultant directly related to the Project, provided such expenses are authorized in advance by Owner, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence. Consultant agrees to use the same discretion when making travel arrangements which Owner will be liable for as if Consultant were paying for the travel expenses. This includes making airline travel arrangements with as much advance notice, traveling coach, and using the least costly airline if choices are available. Car rental will be a mid-size unless three or more Consultant personnel are traveling together and then a full-size car will be rented. Consultant will select a car rental agency with the lowest rate for the travel date(s). Daily meal and hotel expenses will be the federal per diem rates as established by the U.S. General Services Administration;
- .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 Consultant's subconsultants 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 Consultant's subconsultants;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 8.6.2 For Reimbursable Expenses the compensation shall be the expenses pre-approved by the Owner and incurred by the Consultant plus an administrative fee of « five » percent (« 5 » %) of the expenses incurred.

~~§ 8.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Consultant normally maintains and the Consultant incurred or will incur additional costs to satisfy such requirements, the Owner shall reimburse the Consultant for such costs as set forth below:~~

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~~§ 8.6.4 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~

~~§ 8.7 Compensation for Use of Consultant's Instruments of Service~~

~~If the Owner terminates the Consultant for its convenience under Section 7.5, or the Consultant terminates this Agreement under Section 7.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:~~

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ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 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 6.3.~~

§ 9.2 The Owner and Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Consultant 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.

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

§ 9.4 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 Consultant.

§ 9.5 Unless otherwise required in this Agreement, the Consultant 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.

§ 9.6 Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential." If the Owner or Consultant transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.6.1.

§ 9.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Agreement.

ARTICLE 10 SPECIAL TERMS AND CONDITIONS

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

« § 10.1 Conflict of Interest. Consultant shall not refer work to itself or to any prohibited entity in violation of the Stark anti-kickback provisions of federal law. During the term of this Agreement, at any time and from time to time, Consultant agrees to immediately notify Owner's Contract Administrator of all situations that fall within the scope of these provisions. If any conflicts exist at the time of the execution of this Agreement, Consultant agrees to submit a separate attachment to this Agreement for approval.

§ 10.2 Lobbying. The undersigned representative of Consultant certifies, to the best of his or her knowledge and belief, that:

§ 10.2.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

§ 10.2.2 If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Architect shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

§ 10.2.3 Consultant shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, or cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

§ 10.3 Debarment. Consultant hereby certifies that it, its principals, and, if applicable, its subcontractors are not suspended, debarred, or otherwise determined to be ineligible for award of contract by any federal, state, or other governmental body. During the term of this Agreement, Consultant further agrees to immediately notify Owner if it, its principals or any of its subcontractors, are suspended, debarred, or otherwise determined to be ineligible for award of contract, by any federal, state, or other governmental body.

§ 10.4 Americans with Disabilities Act. All facilities must be constructed in compliance with the Americans with Disabilities Act, Public Law 101-336, and with the Uniform Federal Accessibility Standards ("UFAS").

§ 10.5 Federal Tort Claims Act. To the extent that this Contract or any portion of it comes within the coverage of Public Law 101-512 and the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680, as implemented (the "FTCA"), all claims for damages by any person alleged to have been caused while carrying out this Agreement by the employees of Owner and/or its subsidiaries, servants, agents, representatives, affiliates, or contractors, including without limitation personal service contractors, shall be governed by the terms and to the extent provided by the FTCA, and such claims shall be made in accordance with 28 C.F.R. Part 14 and related laws.

§ 10.6 Liens. Consultant, any of its subcontractors, suppliers, materialmen, and their agents, employees, servants, or subcontractors (collectively, "Subcontractors") shall not permit the placing of any lien or any other encumbrance against any premises, work, or equipment as the result of Consultant's failure to pay for all labor expended or equipment, supplies or materials used on the work under this Agreement. If any such lien or other encumbrance attaches, Consultant shall take immediate steps to have it removed or, ten (10) days after notice to Consultant, Owner shall have the absolute right to remove any such liens and Consultant shall pay Owner for all amounts paid, including costs and fees for removing such liens, without regard to the merits of the underlying claim or of any defenses thereto.

§ 10.7 Media Contact. Consultant, its employees, agents, and subcontractors shall not contact any member of the media as a representative of Owner without the prior written approval of the President/CEO of Owner or the Owner Authorizing Official, nor shall they use Owner's name in any advertising, publications, promotional materials or publicity release concerning this Agreement or the work performed pursuant to it.

§ 10.8 Alaska Native/American Indian Preference In Employment and Training. Pursuant to Section 7(B) of P.L. 93-638, 25 U.S.C. §450e(b), the Indian Self-Determination and Education Assistance Act, Consultant shall give preference in all phases of employment and training for all work performed under this Agreement to qualified Alaska Natives and/or American Indians regardless of age, marital status, religion, sex, or "qualified individual disability status," consistent with prevailing law.

§ 10.9 Lien Waivers Required. Consultant shall provide Owner with lien waivers/ releases, in a form acceptable to Owner, from Consultant and from all of its subcontractors, suppliers, materialmen, and their agents, employees, servants, or subcontractors (collectively, "Subcontractors") evidencing that Architect and all such Subcontractors have been paid in full. Such lien waivers/releases shall be a condition precedent for Architect to receive final payment in accordance with Sections 9.10 and 9.10.2.

»

ARTICLE 11 SCOPE OF THE AGREEMENT

§ 11.1 This Agreement represents the entire and integrated agreement between the Owner and the Consultant 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 Consultant. In the event of a conflict between the terms and conditions of this C103™-2015, Standard Form Agreement between Owner and Consultant and an attached exhibit, the terms and conditions of the C103-2015, Standard Form Agreement between Owner and Consultant shall take precedence.

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

- .1 AIA Document C103™-2015, Standard Form of Agreement Between Owner and Consultant.
- .2 AIA Document ~~C203™-2017, Standard Form of Consultant's Services: Commissioning E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:~~



- .3 Scope of Services Exhibit(s) listed in section 2.1

- 4 Other documents:
(List other documents hereby incorporated into the Agreement.)

« »

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

OWNER (Signature)

« April Kyle, MBA » « President/CEO »

(Printed name and title)

CONSULTANT (Signature)

« » « »

(Printed name and title)

DRAFT AIA® Document C203™ – 2017

Standard Form of Consultant's Services: Commissioning

for the following **PROJECT**:
(Name and location or address)

« »
« »

THE OWNER:
(Name, legal status and address)

« »
« »
« »

THE CONSULTANT:
(Name, legal status and address)

« »« »
« »

THE AGREEMENT

This Standard Form of Consultant's Services is part of the accompanying C103™-2015, Standard Form of Agreement between Owner and Consultant without a Predefined Scope of Consultant's Services dated the « » day of « » in the year « » .
(In words, indicate day, month and year of the accompanying C103-2015.)

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 COMMISSIONING SERVICES
- 3 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 4 OWNER'S RESPONSIBILITIES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 The Consultant's services are based on the Initial Information set forth in this Article 1.

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

§ 1.1.1 Systems and assemblies to be commissioned:
(Identify systems and assemblies to be commissioned, such as heating, cooling, refrigeration and ventilation systems and controls; lighting and day lighting controls; domestic hot water systems; renewable energy systems; or building enclosure assemblies.)

« »

§ 1.1.2 The Owner's commissioning goals or objectives:

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

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

This document provides the Consultant's scope of services only and should be attached as an exhibit to AIA Document C103™-2015, Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services.

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(Identify the Owner's commissioning goals or objectives for the Project such as sustainability objectives or performance goals.)

« »

§ 1.1.3 The Consultant shall retain the following sub-consultants:
(List name, discipline, address, and other information.)

« Not applicable »

§ 1.1.4 The Owner's contractors and consultants that affect the Consultant's services:
(List name, discipline, address, and other information.)

« »

§ 1.1.5 Other Initial Information on which the Consultant's services are based:
(List below other information that will affect the Consultant's performance of its services, such as details of the Project's program, Owner's budget for the Project, or anticipated procurement method.)

« »

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

ARTICLE 2 COMMISSIONING SERVICES

§ 2.1 The Consultant shall not be a member, employee, or subcontractor of any entity performing design services or construction work on the Project unless the Owner gives the Consultant informed written consent.

§ 2.2 The Consultant shall manage the Commissioning Services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 2.3 COMMISSIONING PLANNING SERVICES

§ 2.3.1 Initial Coordination Meeting

The Consultant shall facilitate an initial coordination meeting with the Owner and other participants in the Commissioning Process to discuss the Commissioning Services it will provide relative to the Project and other Project participants.

§ 2.3.2 Schedule of Commissioning Services

The Consultant shall prepare, and periodically update, a Schedule of Commissioning Services that shall identify commissioning related activities, including services furnished by the Consultant and completion and submission dates for documents provided by the Consultant. The Consultant shall coordinate the Schedule of Commissioning Services with the design and construction schedules.

§ 2.3.3 Owner's Project Requirements

§ 2.3.3.1 In conjunction with the information provided in Section 1.1.1 and 1.1.2, the Consultant shall assist the Owner and the Owner's consultants in developing the Owner's Project Requirements, ~~or shall review the Owner's Project Requirements if provided by the Owner.~~ At a minimum, the Owner's Project Requirements shall identify systems and assemblies to be commissioned and define the Owner's goals for each, including functional expectations, performance criteria to be met by the design, sustainable objectives to be achieved, cost considerations, and maintenance expectations. Where practical, the Owner's Project Requirements shall include measurable indicators or standards that can be used to verify that the Owner's goals have been met. The Consultant shall assist the Owner to periodically update the Owner's Project Requirements.

§ 2.3.3.2 The Owner and Consultant acknowledge that achievement of the Owner's Project Requirements depends on factors beyond the Consultant's control. Accordingly, the Consultant does not warrant or guarantee that the Project will achieve the Owner's Project Requirements

§ 2.3.4 Basis of Design Review

The Basis of Design is a document, prepared by ~~the Owner and~~ the Owner's consultants for the Owner, that records the concepts, calculations, decisions, and product selections used to (a) meet the Owner's Project Requirements, and (b) satisfy applicable laws, codes, and regulations. Upon receipt from the Owner, the Consultant shall review the Basis of Design, and updates thereto, for conformance with the Owner's Project Requirements and provide the Owner with written comments regarding deficiencies identified.

§ 2.3.5 Commissioning Plan

The Consultant shall provide the Owner with a written Commissioning Plan that is based on the Owner's Project Requirements and the Basis of Design. The Commissioning Plan shall describe commissioning activities for the Project and identify documentation requirements of the commissioning process. The Consultant shall update the Commissioning Plan periodically as appropriate to the level of completeness of the design and the progress of construction. The Commissioning Plan shall include:

- .1 identification of the Owner's Project Requirements and the portions of the Basis of Design used as the basis of the Commissioning Plan;
- .2 a list of participants in the commissioning process, their roles and responsibilities, and protocols for participant communication and information distribution;
- .3 a list of systems and assemblies to be commissioned and performance expectations for each;
- .4 a description of commissioning activities and responsibility for each;
- .5 a summary of commissioning related documentation required by governmental authorities or entities certifying the Project.
- .6 the Schedule of Commissioning Services;
- .7 protocols for commissioning design reviews;
- .8 protocols for commissioning submittal reviews;
- .9 protocols to document changes to the Owner's Project Requirements and Basis of Design,
- .10 protocols and templates for commissioning related documentation, including the Issues Log, Construction Checklists, Functional Performance Test procedures and reports, the Systems Manual, and the operator training plan;
- .11 identification of, and protocols for, documents to be provided by the Owner's contractors, such as start-up reports, systems readiness test reports, test and balance plans and reports, and quality control test documents; and
- .12 protocols for the Consultant to report observed deficiencies that pertain to the systems and assemblies to be commissioned.

§ 2.4 DESIGN PHASE SERVICES

§ 2.4.1 Design Phase Coordination Meeting

The Consultant shall conduct and document a design phase coordination meeting with the Owner and other participants in the commissioning process to discuss and review the Owner's Project Requirements and the Commissioning Plan. Subject to Section 3.2.1.2, the Consultant shall conduct and document additional design phase coordination meetings as necessary.

§ 2.4.2 Commissioning Design Reviews

The Consultant shall periodically review the designs prepared by the Owner's consultants and contractors for the systems and assemblies to be commissioned. The Consultant's review shall be for the limited purpose of checking for conformance with information given and concepts expressed in the Owner's Project Requirements and the Basis of Design. The Consultant shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the designs prepared by the Owner's consultants and contractors. The Consultant's commissioning design reviews shall be made with reasonable promptness and in accordance with the Commissioning Plan and Schedule of Commissioning Services. Upon completion of each review, the Consultant shall issue written comments and recommendations in accordance with the Commissioning Plan. At each subsequent review and after the final review, the Consultant shall document the resolution of comments from the previous reviews. The Consultant shall review the HVAC control systems sequence of operations during design.

§ 2.4.3 Commissioning Specifications

The Consultant shall prepare Commissioning Specifications that define the general commissioning requirements of the Project and commissioning requirements for each system and assembly to be commissioned. The Commissioning Specifications shall include requirements for Construction Checklist development and execution, startup procedures, Functional Performance Tests and acceptance criteria, and operator training. If necessary, the

Consultant shall coordinate with the Owner's other consultants to integrate commissioning related requirements into specifications provided by others.

§ 2.5 CONSTRUCTION PHASE

§ 2.5.1 Construction Phase Coordination Meeting

Prior to commencement of construction activities on systems and assemblies to be commissioned, the Consultant shall conduct and document a construction phase coordination meeting with the Owner and other participants in the commissioning process to discuss and review the Commissioning Plan and Commissioning Specifications. Subject to Section 3.2.1.3, the Consultant shall conduct and document additional commissioning phase coordination meetings as necessary during construction.

§ 2.5.2 Submittal Review

The Consultant shall review and provide written comments upon contractors' submittals that pertain to the systems and assemblies to be commissioned, but only for the limited purpose of checking for conformance with the requirements of the Commissioning Plan and Commissioning Specifications. The Consultant's action in reviewing submittals shall be taken in accordance with the approved submittal schedule, or in the absence of an approved schedule, with reasonable promptness while allowing sufficient time to permit adequate review. The Consultant's submittal review is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of systems or assemblies, which are the contractors' responsibilities. The Consultant's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences, or procedures.

§ 2.5.3 Construction Documentation Review

During construction, the Consultant shall review documentation related to the systems and assemblies to be commissioned such as meeting minutes, field reports, minor changes in the Work, Construction Change Directives, and Change Orders. In accordance with the Commissioning Plan, the Consultant shall report issues it identifies during its reviews that may prevent the systems and assemblies from performing in accordance with the Commissioning Plan and Commissioning Specifications.

§ 2.5.4 Issues Log

The Consultant shall consult with the Owner and other participants in the commissioning process regarding commissioning related issues that arise during the Construction Phase. The Consultant shall maintain and update an Issues Log regarding such issues and their resolution in accordance with the protocols established in the Commissioning Plan.

§ 2.5.5 Construction Checklists

The Consultant shall provide Construction Checklists for systems and assemblies to be commissioned that the Owner's contractors can use to verify that materials and components are on site, ready for installation, correctly installed, and in compliance with the Commissioning Plan and Commissioning Specifications. The Consultant shall distribute the Construction Checklists in accordance with the Commissioning Plan.

§ 2.5.6 Site Visits

Unless otherwise stated in the Commissioning Plan, the Consultant shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the assembly, installation, and startup of systems and assemblies to be commissioned; however, the Consultant shall not have control over, charge of, or responsibility for the assembly, installation, and startup of such systems and assemblies. In accordance with the Commissioning Plan, the Consultant shall promptly report (1) known deviations from the Commissioning Specifications and Commissioning Plan and (2) defects and deficiencies observed by the Consultant.

§ 2.5.7 Functional Performance Tests

§ 2.5.7.1 Functional Performance Tests evaluate the function and operation of systems and assemblies to be commissioned by observation or monitoring. Prior to the commencement of Functional Performance Tests, the Consultant shall review start-up reports, systems readiness test reports, test and balance plans and reports, and quality control test documents, for systems and assemblies to be commissioned, and report any observed deficiencies in accordance with the Commissioning Plan.

§ 2.5.7.2 The Consultant shall coordinate, observe, and document Functional Performance Tests for systems and assemblies to be commissioned, in accordance with the procedures set forth in the Commissioning Plan and Commissioning Specifications.

§ 2.5.7.3 The Consultant shall prepare written reports that summarize each Functional Performance Test. The Consultant shall document deficiencies identified during Functional Performance Tests in the Issues Log. Each deficiency shall be resolved by the appropriate party and, thereafter the Consultant shall direct, observe, and document re-testing to confirm that the deficiency has been corrected. The Consultant shall distribute the Functional Performance Test reports in accordance with the Commissioning Plan.

§ 2.6 DOCUMENTATION AND TRAINING PHASE SERVICES

§ 2.6.1 Documentation Review

The Consultant shall review operations and maintenance manuals, the Systems Manual, record documents, and warranties, for commissioned systems and assemblies, for conformance with the Commissioning Specifications. The Consultant shall report observed deficiencies in accordance with the Commissioning Plan.

§ 2.6.2 Systems Manual

Prior to the start of operator training and in accordance with the Commissioning Plan, the Consultant shall provide the Owner with a Systems Manual that describes how to operate and maintain the commissioned systems and assemblies. The Systems Manual shall consist of documents provided by the Owner's contractors and consultants, including operations and maintenance manuals, submittals, record drawings, specifications, certifications, and training documents.

§ 2.6.3 Operator Training

§ 2.6.3.1 The Consultant shall review contractor -provided information regarding operator training, and the schedule of training activities, for conformance with specification requirements for systems and assemblies to be commissioned. The Consultant shall report observed deficiencies in accordance with the Commissioning Plan.

§ 2.6.3.2 The Consultant shall maintain an operator training log for inclusion in the Commissioning Report. The operator training log will include the attendees' names, training dates, system or equipment on which training was performed, and the name, title, and contact information of the trainer.

§ 2.6.4 Commissioning Report

The Consultant shall prepare a Commissioning Report that summarizes the operation of the commissioned systems and assemblies and the Commissioning Services performed. The Commissioning Report shall include an executive summary, the Owner's Project Requirements, Basis of Design, the final Commissioning Plan, Commissioning Specifications, design review comments and resolutions, system readiness test reports, completed Construction Checklists, template Functional Performance Test procedure forms, completed Functional Performance Test reports, the Issues Log, the operator training plan and log, a description of required deferred Functional Performance Tests, and recommendations for ongoing commissioning. The Consultant shall distribute the Commissioning Report in accordance with the Commissioning Plan.

§ 2.6.5 Post Occupancy Review

The Consultant shall meet with the Owner prior to the expiration of the Owner's contractors' periods for correction of Work to review the operations and performance of the commissioned systems and assemblies, and to make recommendations to the Owner.

ARTICLE 3 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 3.1 Supplemental Services

§ 3.1.1 The Consultant shall provide the listed Supplemental Services only if specifically designated in the table below as the Consultant's responsibility. Unless otherwise specifically addressed in the Agreement, if neither the Owner nor the Consultant is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Consultant's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Consultant or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 3.1.2 below or attach the description of services as an exhibit to the Agreement.)

Supplemental Services	Responsibility (Consultant, Owner or Not Provided)
§ 3.1.1.1 Existing Facilities Surveys	
§ 3.1.1.2 Sustainable Design/Lifecycle Studies	
§ 3.1.1.3 Documentation required for Sustainability Certification	
§ 3.1.1.4 On-Site Project Representation	
§ 3.1.1.5 Additional Post-Occupancy Evaluations	
§ 3.1.1.6 Lessons Learned Workshop	
§ 3.1.1.7 Building Occupant Training	
§ 3.1.1.8 Seasonal and Deferred Functional Testing	
§ 3.1.1.9 Ongoing Commissioning	
§ 3.1.1.10 Fabricator or Manufacturer Facility Visit	
§ 3.1.1.11 Other Supplemental Services	

§ 3.1.2 Description of Supplemental Services

§ 3.1.2.1 A description of each Supplemental Service identified in Section 3.1.1 as the Consultant's responsibility is provided below.

(Describe in detail the Consultant's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 3.1.2.2 A description of each Supplemental Service identified in Section 3.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 3.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 3.2 Consultant's Additional Services

§ 3.2.1 The Consultant shall provide Commissioning Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Consultant shall notify the Owner in writing:

- .1 « » (« ») commissioning planning meetings
- .2 « » (« ») Design Phase meetings
- .3 « » (« ») Construction Phase meetings
- .4 « » (« ») Documentation and Training Phase meetings
- .5 « » (« ») commissioning related design reviews
- .6 « » (« ») reviews of each contractor submittal
- .7 « » (« ») operator training sessions
- .8 « » (« ») reviews of readiness test reports submitted by contractors
- .9 « » (« ») site visits during construction
- .10 « » (« ») inspections for any system or assembly to be commissioned to determine whether such portion of the Work is ready for Functional Performance Tests
- .11 « » (« ») Functional Performance Tests of each system and assemblies to be commissioned

§ 3.2.2 If the services covered by the Agreement have not been completed within « fifty » (« 50 ») months of the date of the Agreement through no fault of the Consultant, extension of the Consultant's services beyond that time shall be compensated as Additional Services.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 The Owner shall identify the systems and assemblies to be commissioned and, with the Consultant's assistance, provide written Owner's Project Requirements as described in Section 2.3.3.

§ 4.2 The Owner shall provide the Consultant information necessary to perform the Commissioning Services, which may include: the Basis of Design; design drawings; construction documents; record drawings; submittals; operation and maintenance manuals; master plans; operation costs; operation budgets; and pertinent records relative to historical building data, building equipment, furnishings, and repairs.

§ 4.3 The Owner shall provide access to the property, buildings, and personnel necessary for the Consultant to provide the Commissioning Services.

