



It's in your hands ~ "Build a stronger community – Shop Locally"

**AGENDA  
REGULAR SESSION  
MAYOR AND COUNCIL  
COUNCIL CHAMBERS - 473 S. Main Street, Room #106  
WEDNESDAY, SEPTEMBER 19, 2012  
6:30 P.M.**

*Note: Council member(s) may attend Council Sessions either in person or by telephone, video, or internet conferencing.*

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Consent Agenda** – All those items listed below may be enacted upon by one motion and approved as consent agenda items. Any item may be removed from the Consent Agenda and considered as a separate item if a member of Council requests.
  - a) **Approval of the Minutes:**
    - 1) Regular Session – September 5, 2012
    - 2) Special Session – September 5, 2012
    - 3) Executive Session – September 5, 2012 (recorded)
  - b) **Set Next Meeting, Date and Time:**
    - 1) September 26, 2012 at 6:30 p.m. – Council Hears Planning & Zoning Matters – **CANCELLED**
    - 2) September 26, 2012 at 5:00 p.m. – Work Session
    - 3) October 3, 2012 at 6:30 p.m. – Regular Session
    - 4) October 10, 2012 at 5:00 p.m. – Work Session
    - 5) October 17, 2012 at 6:30 p.m. – Regular Session
    - 6) October 24, 2012 at 5:00 p.m. – Work Session
    - 7) October 24, 2012 at 6:30 p.m. – Council Hears Planning & Zoning Matters
  - c) **Possible approval of a Special Event Liquor License application for Greater Phoenix Youth at Risk fundraiser event at Jackpot Ranch during the Verde Valley Fall Festival on October 19, 20 and 21.** Staff Resource: Debbie Barber
5. **Council Informational Reports.** Council reports are relative to the committee meetings that Council members attend. The Committees are Camp Verde Schools Education Foundation; Chamber of Commerce, Intergovernmental Association, NACOG Regional Council, Verde Valley Transportation Planning Organization, Yavapai County Water Advisory Committee, and shopping locally. In addition, individual members may provide brief summaries of current events. The Council will have no discussion or take action on any of these items, except that they may request that the item be placed on a future agenda.
6. **Special Announcements & Presentations –**
  - **Welcome to new businesses:**
    - ❖ **ALM Construction, Inc. – Clarkdale**
    - ❖ **Great Western Services – Camp Verde**
    - ❖ **Pie Town Soap & Moon Pies Emporium – Clarkdale**
    - ❖ **E CO1 Exteriors, LLC – Surprise**
    - ❖ **Source Refrigeration & HCAC – Anaheim, CA**
    - ❖ **Custom Steel Fabrication, Inc. – Surprise**
    - ❖ **CES Mobile Home Movers, LLC – Tucson**
    - ❖ **Redbox Automated Retail, LLC – Oakbrook Terrace, IL**
    - ❖ **Buildings & Barns, Inc. – Mesa**
7. **Call to the Public for items not on the agenda.**

8. **Update and discussion by Dr. Amber Lee, Camp Verde Unified School District relative to their projects and goals for the upcoming year. Staff Resource: Russ Martin**
9. **Discussion, consideration, and possible authorization for the Mayor to execute another short-term extension of the existing Arizona State Parks agreement (through December 31, 2012) concerning funding and operation of Ft. Verde State Historic Park. Staff Resource: Russ Martin**
10. **Discussion, consideration, and possible approval of an Architectural Services Contract with Joel Westervelt Architect for services in preparation for construction of a new Library. Options include a standard contract for services or a "green" option that would include application for LEED Silver award level. Staff Resource: Russ Martin**
11. **Discussion, consideration, and possible approval of a Civil Engineering Services contract with Shepard Wesnitzer for services in preparation for construction of a new Library. Staff Resource: Russ Martin**
12. **Call to the Public for items not on the agenda.**
13. **Manager/Staff Report** Individual members of the Staff may provide brief summaries of current events and activities. These summaries are strictly for informing the Council and public of such events and activities. The Council will have no discussion, consideration, or take action on any such item, except that an individual Council member may request that the item be placed on a future agenda.
14. **Adjournment**

Posted by:

*O Jones*

Date/Time:

*9-13-2012*

*1:15 P.m*

Note: Pursuant to A.R.S. §38-431.03.A.2 and A.3, the Council may vote to go into Executive Session for purposes of consultation for legal advice with the Town Attorney on any matter listed on the Agenda, or discussion of records exempt by law from public inspection associated with an agenda item.

The Town of Camp Verde Council Chambers is accessible to the handicapped. Those with special accessibility or accommodation needs, such as large typeface print, may request these at the Office of the Town Clerk.

**DRAFT**  
**MINUTES**  
**REGULAR SESSION**  
**MAYOR AND COUNCIL**  
**COUNCIL CHAMBERS**  
**WEDNESDAY, SEPTEMBER 5, 2012**  
**6:30 P.M.**

Minutes are a summary of the actions taken. They are not verbatim.  
Public input is placed after Council motions to facilitate future research.  
Public input, where appropriate, is heard prior to the motion

1. **Call to Order**

The meeting was called to order at 6:30 p.m.

2. **Roll Call**

Mayor Burnside, Vice Mayor Kovacovich, Councilors Whatley, George, Baker, Jones and German were present.

**Also Present:** Town Manager Russ Martin, Economic Development Director Melissa Preston, Library Director Kathy Hellman, and Recording Secretary Margaret Harper

3. **Pledge of Allegiance**

The Pledge was led by German.

4. **Consent Agenda** – All those items listed below may be enacted upon by one motion and approved as consent agenda items.

Any item may be removed from the Consent Agenda and considered as a separate item if a member of Council requests.

a) **Approval of the Minutes:**

- 1) Regular Session – August 15, 2012
- 2) Special Session – August 15, 2012

b) **Set Next Meeting, Date and Time:**

- 1) September 12, 2012 at 5:00 p.m. – Work Session
- 2) September 19, 2012 at 6:30 p.m. – Regular Session
- 3) September 26, 2012 at 6:30 p.m. – Council Hears Planning & Zoning Matters

c) **Possible approval of a professional service contract for Timothy W. Grier, PC for indigent legal services for the Camp Verde Municipal Court. This is a budgeted item.** Staff Resource: Judge Harry Cipriano

d) **Possible approval of a vendor contract with Quality Copy Inc. for self-serve, coin operated printing, copying and faxing services for the Camp Verde Library patrons.** Staff Resource: Kathy Hellman

e) **Possible approval of ordinance 2012-A386, an ordinance of the Mayor and Common Council of the Town of Camp Verde, Yavapai County Arizona, approving the sale of real property located at 2095 W. Horseshoe Bend Drive, Camp Verde, Arizona.** Staff Resource: Russ Martin

On a motion by Kovacovich, seconded by Baker, the Consent Agenda was unanimously approved as presented, with Item 4.d) pulled.

Burnside requested that Item 4.d) be pulled for discussion.

**4.d) Possible approval of a vendor contract with Quality Copy Inc. for self-serve, coin operated printing, copying and faxing services for the Camp Verde Library patrons**

On a motion by Burnside, seconded by German, the Council unanimously voted to approve the contract as stated in the agenda packets.

Library Director Kathy Hellman described the subject device which she came across in Anaheim at the American Library Convention that will provide printing, copying and fax services to Camp Verde Library patrons. The initial trial period is for 50 days, at no obligation to the Town, and there will never be any cost to the Town. In response to questions from the Council, Hellman said that the vendor will provide all the

supplies for its operation, with maintenance the responsibility of staff, similar to any copy machine. No monetary benefit to the Town is anticipated at this time since that depends upon an extreme number of copies being made. When asked about the contract requirement for use of a specific amount of paper, Hellman said that the contract could be open-ended; the vendor knows that the Town is building a new Library.

5. **Council Informational Reports**

**Kovacovich** commented that he enjoyed the League Conference; the keynote speaker was very good.

**George** reported on his attendance at the Verde River Basin Partnership Education Outreach meeting; they will have a booth at Verde River days on September 29; George said he had suggested a Chili Cook-off event on the 4<sup>th</sup> Friday, in February or March.

**Burnside** also commented on the League Conference; it was very informative. Referring to five newspapers from different areas, Burnside said that all of the communities and citizens are having the same problem with the current situation; the only difference is the magnitude.

6. **Special Announcements & Presentations –**

- **Possible approval of a proclamation declaring September 11, 2012 as a “Day to Remember”**  
Following the presentation made in Item 8 below, Mayor Burnside formally proclaimed and declared September 11, 2012 as a “Day to Remember.”

**Note:** Richard Dehnert, representing the Verde Valley Guidance Clinic in connection with Item 9 below, was invited to share his comments at this time; his presentation is summarized in Item 9.

7. **Call to the Public for items not on the agenda.**

(Comments from the following individual are summarized.)

**Bob Johnson** reported on problems of flooding caused by a microburst in Verde Lakes recently, and said he wanted to put some pressure on engineering to address the situation; also, there is a need for weeds to be cut out there. (*Burnside requested the Town Manager to look into those complaints.*)

There was no further public input.

8. **Presentation by Prescott Valley Council Member Mary Mallory on Prescott Valley Healing Field of Northern Arizona.** Staff Resource: Melissa Preston

Melissa Preston introduced Mary Mallory, who presented a video showing the many different communities and groups who have undertaken Healing Field projects consisting of row after row of flags being displayed to commemorate and show respect for those who had lost their lives in the National tragedy of the terrorist attack on the World Trade Center on September 11, 2001. Following the video, Ms. Mallory commented on how the project has grown into a National expression of respect, and a wellspring of human kindness. She outlined the upcoming Prescott Valley Healing Field event, and explained that volunteers as well as cash are always needed; for any questions, her phone number is 533-8896.

Mayor Burnside sponsored the following item:

9. **Presentation by Northern Arizona Regional Behavioral Health Authority, followed by possible approval of a proclamation designating September as “National Recovery Month”.**

Burnside formally proclaimed the designation of September as “National Recovery Month..” and presented a copy of the Proclamation to the speaker.

The Northern Arizona Regional Behavioral Health Authority was represented by Richard Dehnert from the Verde Valley Clinic who outlined the significant problems of mental health and substance abuse disorders

affecting lives, and the efforts being made in prevention and treatment, stressing that recovery is possible. Mr. Dehnert urged the Council to support recovery by approving the subject Proclamation, and invited everyone to a Recovery Celebration scheduled for Saturday, September 22; it will feature testimonials from individuals in recovery.

10. **Progress update, discussion, and possible direction to staff relative to the Library Construction Project to include development of final scoping (cost) and preparation for final financing and construction timeline.** Staff Resource: Kathy Hellman/Russ Martin

On a motion by German, seconded by George, the Council unanimously voted to direct staff to engage professionals in developing a final scope including size, cost and financial package to present to Council for future consideration.

Town Manager Martin said that the Town is now at a point where it can start spending some resources, and it is important to understand what they are being spent on. Before construction starts, which is anticipated by next year, several things need to be done, the first of which is financing. Martin outlined three options; one, financing through USDA; two, private financing with bonding companies; and three, contacting local banks. Martin commented on architect Joel Westervelt's outstanding dedication and contribution to the community. When it is time to engage the group of professionals, that will be brought before the Council in the future. The Town has decided on the site for the Library, the flood level has been estimated, and the first step will be to get a permit to build from County Flood Control and then the design can go forward. Martin said he will check in again with the Council to finalize the scope and final cost. Martin outlined the estimated cost of between 1.3 to 1.9 million, and the finances on hand, including proceeds from the sale of properties and the approximately \$300,000 raised by CCCVL. The team that has been assembled to lead the project consists of Joel Westervelt, Linda Harkness, Kathy Hellman, Gerry Laurito, and Mike Showers. In response to a question from Council, Martin said he expects to hear back from Yavapai County regarding the floodplain when the Council has given approval for staff to go forward with the professional services, possibly a couple of weeks from now when the County has that information on board.

The Council members discussed construction details with Westervelt consisting of two phases, which he described; as far as "turn key" completion, Westervelt said he anticipates being close to it. Martin stated that Kathy Hellman would be at the helm of the Library project; he would not try to micro-manage it. Any ideas or assistance from volunteers will be welcomed throughout the construction and landscaping process. Kathy Hellman described her experience throughout the construction and completion of the Prescott Valley Library; that experience will be valuable during this project.

#### **PUBLIC INPUT**

(Comments from the following individual are summarized.)

**Bob Johnson** said he has been in Camp Verde 30 years and asked if anyone had ever seen flooding in that area where the Library is planned.

There was no further public input.

The Council discussion continued with a comment from Whatley explaining that she has lived right there in that area for 25 years, and only one time was it ever close to flooding; there has been no evidence of any flooding on the side where the Library will be constructed. In response to a question from Burnside, Linda Harkness said that the intent of CCCVL is to be there for whatever is seen as important, and they will continue with the fundraising. Burnside asked Martin if he felt comfortable that there will be no more outcry for the building being a part of the Master Plan shown on the map in his office. Martin said he anticipated that there will be some outcry, but the decision has been made to start with the site that has been selected; staff will continue to work with that until it has been proven impossible. When asked about whether he would set up workshops for input, Martin commented that he would consider that if it would help, but that "government by committee does not work very well." The public can bring comments to his attention, but

the project will get done. Burnside asked Martin if he will be requesting Council approval for the location; Martin replied, "No," that the location has been decided upon.

German wanted to say that the entire community deserves commendation for their perseverance in hanging in there and continuing to raise money, and expressed appreciation for Westervelt's volunteer work and Martin's efforts to keep the ball rolling.

11. **Call to the Public for items not on the agenda.**

There was no public input.

12. **Manager/Staff Report**

In connection with the upcoming Sustainability conference, Martin said to let him know who will be attending so that arrangements can be made for transportation or carpooling; there will be a 9/11 Ceremony at noon at the Ramada; next Friday is Lynda Moore's last day, stop by and wish her well; Martin commented on Council getting prepared for the Work Session scheduled for 5:00 p.m. next Wednesday, and referred to the Goal Memo he had talked about earlier.

13. **Adjournment**

On a motion by Baker, seconded by German, the meeting was adjourned at 7:44 p.m.

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Bob Burnside, Mayor

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Margaret Harper, Recording Secretary

**CERTIFICATION**

I hereby certify that the foregoing Minutes are a true and accurate accounting of the actions of the Mayor and Common Council of the Town of Camp Verde during the Regular Session of the Town Council of Camp Verde, Arizona, held on the 5<sup>th</sup> day of September 2012. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Debbie Barber, Town Clerk

4.03  
**DRAFT MINUTES  
SPECIAL SESSION  
MAYOR and COMMON COUNCIL  
of the  
TOWN OF CAMP VERDE  
COUNCIL CHAMBERS  
473 S. Main Street, # 106  
WEDNESDAY, SEPTEMBER 5, 2012  
5:00 p.m.**

**Minutes are a summary of the actions taken. They are not verbatim.  
Public input is placed after Council motions to facilitate future research.**

**Public input, where appropriate, is heard prior to the motion**

**1. Call to Order**

Mayor Burnside called the meeting to order at 5:00 p.m.

**2. Roll Call**

Mayor Burnside, Vice Mayor Kovacovich, and Councilors Baker, German, George, Jones and Whatley were present.

**Also Present**

Town Manager Russ Martin.

- 3. Discussion of the Manager's annual performance review.** Note: Council may vote to hear this matter in Executive Session pursuant to ARS §38-431.03 (A)(1) for discussion or consideration of assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body and ARS §38-431.03 (A)(3) for discussion or consultation for legal advice with the attorney.

The Mayor explained that this meeting was for the annual performance review of the Town Manager, noting that the Manager had requested discussion in executive session.

Council took no action on this item.

On a motion by Whatley, seconded by Baker, voted unanimously to go into Executive Session pursuant to ARS §38-431.03 (A)(1) for discussion or consideration of assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body

The Special Session was recessed at 5:03 p.m. and reconvened at 6:27 p.m.

**4. Adjournment**

On a motion by Baker, seconded by Kovacovich the meeting was adjourned at 6:28p.m.

\_\_\_\_\_  
Bob Burnside, Mayor

\_\_\_\_\_  
Deborah Barber, Town Clerk

**CERTIFICATION**

I hereby certify that the foregoing Minutes are a true and accurate accounting of the actions of the Mayor and Common Council of the Town of Camp Verde during the Special Session of the Town Council of Camp Verde, Arizona, held on the 5<sup>th</sup> day of September 2012. I further certify that the meeting was duly called and held, and that a quorum was present.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Debbie Barber, Town Clerk



Town of Camp Verde

**Agenda Item Submission Form – Section I**

**Meeting Date: September 19, 2012**

- Consent Agenda       Decision Agenda       Executive Session Requested
- Presentation Only       Action/Presentation

**Requesting Department: Clerk's Office**

**Staff Resource/Contact Person: Deborah Barber**

**Agenda Title (be exact: Possible approval of a Special Event Liquor License application for Linda Lyman, Greater Phoenix Youth at Risk Fundraiser to be held at Jackpot Ranch for the Verde Valley Fall Festival on October 19, 20, & 21<sup>st</sup>. The organization is raising funds for a trip to participate in the West Coast Classic in California**

**List Attached Documents: – Application for Special Event License**

**Estimated Presentation Time: 0**

**Estimated Discussion Time: 0**

**Reviews Completed by:**

Department Head: Deborah Barber       Town Attorney Comments: N/A

Finance Department N/A

**Fiscal Impact: None**

**Budget Code: N/A      Amount Remaining: \_\_\_\_\_**

**Comments:**

**Background Information:**

**Recommended Action (Motion): Approve Special Event Liquor License application for Linda Lyman, Greater Phoenix Youth at Risk Fundraiser to be held at Jackpot Ranch for the Verde Valley Fall Festival on October 19, 20, & 21<sup>st</sup>. The organization is raising funds for a trip to participate in the West Coast Classic in California**

**Instructions to the Clerk: Section II not required. Process application.**



10. Has the applicant been convicted of a felony in the past five years, or had a liquor license revoked?  
 YES  NO (attach explanation if yes)

11. This organization has been issued a special event license for 3 days this year, including this event  
(not to exceed 10 days per year).

12. Is the organization using the services of a promoter or other person to manage the event?  YES  NO  
If yes, attach a copy of the agreement.

13. List all people and organizations who will receive the proceeds. Account for 100% of the proceeds.  
**THE ORGANIZATION APPLYING MUST RECEIVE 25% OF THE GROSS REVENUES OF THE SPECIAL  
EVENT LIQUOR SALES.**

Name Jackpot Ranch 75%  
Percentage

Address 2025 Reservation Loop Road, Came Verde, AZ 86322

Name Greater Phoenix Youth at Risk, Inc. 25%  
Percentage

Address 1001 East Pierce Street, Phoenix, AZ 85006  
(Attach additional sheet if necessary)

14. Knowledge of Arizona State Liquor Laws Title 4 is important to prevent liquor law violations. If you have any questions regarding the law or this application, please contact the Arizona State Department of Liquor Licenses and Control for assistance.

NOTE: ALL ALCOHOLIC BEVERAGE SALES MUST BE FOR CONSUMPTION AT THE EVENT SITE ONLY.  
**"NO ALCOHOLIC BEVERAGES SHALL LEAVE SPECIAL EVENT PREMISES."**

15. What security and control measures will you take to prevent violations of state liquor laws at this event?  
(List type and number of security/police personnel and type of fencing or control barriers if applicable)

0 # Police  Fencing  
1 # Security personnel  Barriers

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Is there an existing liquor license at the location where the special event is being held?  YES  NO  
If yes, does the existing business agree to suspend their liquor license during the time period, and in the area in which the special event license will be in use?  YES  NO

**(ATTACH COPY OF AGREEMENT)**

\_\_\_\_\_  
Name of Business ( ) Phone Number

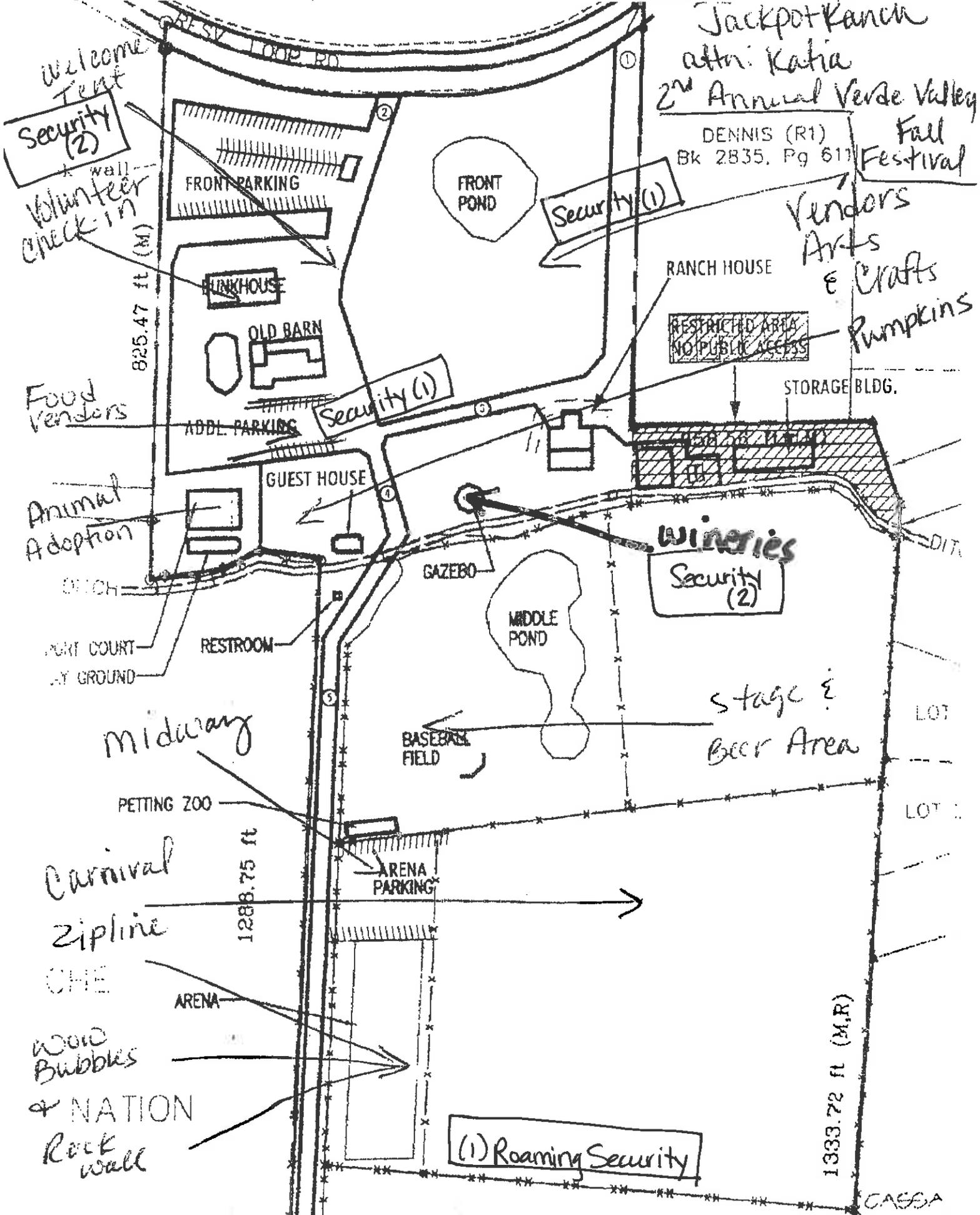
17. Your licensed premises is that area in which you are authorized to sell, dispense, or serve spirituous liquors under the provisions of your license. The following page is to be used to prepare a diagram of your special event licensed premises. Please show dimensions, serving areas, fencing, barricades or other control measures and security positions.

Jackpot Ranch  
attn: Katia  
2<sup>nd</sup> Annual Verde Valley

DENNIS (R1)  
Bk 2835, Pg 611

Fall Festival

Vendors  
Arts  
& Crafts  
Pumpkins



Security (2)

Volunteer  
check-in

Food  
Vendors

Animal  
Adoption

SPORT COURT  
PLAY GROUND

Midway

PETTING ZOO

Carnival

Zipline

CHE

Wood  
Bubbles

NATION

Rock  
wall

FRONT PARKING

LINKHOUSE

OLD BARN

ADDL. PARKING

GUEST HOUSE

RESTROOM

FRONT  
POND

GAZEBO

MIDDLE  
POND

BASEBALL  
FIELD

ARENA  
PARKING

ARENA

(1) Roaming Security

Security (1)

Security (1)

Wineries  
Security (2)

RANCH HOUSE

RESTRICTED AREA  
NO PUBLIC ACCESS

STORAGE BLDG.

LOT

LOT

1333.72 ft (M,R)

CASSA

Nearest Highway T-17 / Peace Street Recreation Lane

**THIS SECTION TO BE COMPLETED ONLY BY AN OFFICER, DIRECTOR OR CHAIRPERSON OF THE ORGANIZATION NAMED IN QUESTION #1**

18. I Mark A Veigt declare that I am an Officer/Director/Chairperson appointing the applicant listed in Question 6, to apply on behalf of the foregoing organization for a Special Event Liquor License.

X Mark A Veigt Vice Chair Ad 8/28/12 (480) 363-6072  
 (Signature) (Title/Position) (Date) (Phone #)

State of Maricopa County of Arizona



The foregoing instrument was acknowledged before me this

28 Aug. 2012  
 Day Month Year

My Commission expires on \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Signature of NOTARY PUBLIC)

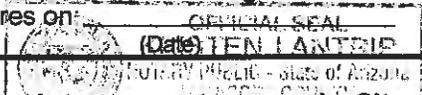
**THIS SECTION TO BE COMPLETED ONLY BY THE APPLICANT NAMED IN QUESTION #6**

19. I Linda F. Lyman declare that I am the APPLICANT filing this application as listed in Question 6. I have read the application and the contents and all statements are true, correct and complete.

X Linda F. Lyman State of Maricopa County of Arizona  
 (Signature) President/CEO The foregoing instrument was acknowledged before me this  
Greater Phoenix Youth at Risk

28 Aug. 2012  
 Day Month Year

My commission expires on \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Signature of NOTARY PUBLIC)



**You must obtain local government approval. City or County MUST recommend event and complete item #20. The local governing body may require additional applications to be completed and submitted 60 days in advance of the event. Additional licensing fees may also be required before approval may be granted.**

**LOCAL GOVERNING BODY APPROVAL SECTION**

20. I, \_\_\_\_\_ (Government Official) \_\_\_\_\_ (Title) hereby recommend this special event application on behalf of \_\_\_\_\_ (City, Town or County) \_\_\_\_\_ (Signature of OFFICIAL) \_\_\_\_\_ (Date)

**FOR DLLC DEPARTMENT USE ONLY**

Department Comment Section:  
 \_\_\_\_\_  
 \_\_\_\_\_ (Employee) \_\_\_\_\_ (Date)

APPROVED  DISAPPROVED BY: \_\_\_\_\_  
 \_\_\_\_\_ (Title) \_\_\_\_\_ (Date)

**SERIES: 15 SPECIAL EVENT LICENSE (Temporary)**

**Non-transferable  
On-sale retail privileges**

**PURPOSE:**

**Allows a charitable, civic, fraternal, political or religious organization to sell and serve spirituous liquor for consumption only on the premises where the spirituous liquor is sold, and only for the period authorized on the license. This is a temporary license.**

**ADDITIONAL RIGHTS AND RESPONSIBILITIES:**

**The applicant for a special event license must request a special event application from the Department and file the application with the governing body of the city or town, or Board of Supervisors of an unincorporated area of a county (where the special event is to take place) for approval or disapproval. Some local governing bodies may require approximately 60 days prior notice.**

**If the application is approved by the local authority, and the event meets the requirements for granting the license, the Director will issue a special event license to the qualifying organization.**

**Qualifying organizations will be granted a special event license for no more than ten (10) days in a calendar year. Events must be held on consecutive days and at the same location or additional licenses will be required. The license is automatically terminated upon closing of the last day of the event or the expiration of the license, whichever occurs first.**

**The qualified organization must receive at least twenty-five percent (25 %) of the gross revenues of the special event liquor sales.**

**A person selling spirituous liquor under a special event license must purchase the spirituous liquor from the holder of a license authorized to sell off-sale; *except that*, in the case of a non-profit organization which has obtained a special event license for the purpose of charitable fund raising activities, a person may receive the spirituous liquor from a wholesaler as a donation.**

**AVERAGE APPROVAL TIME: One (1) to seven (7) days.**

**PERIOD OF ISSUANCE:**

**Issued for no more than a cumulative total of ten (10) days in a calendar year. A special event may be held for more than one (1) day, but it must be held on consecutive days and at the same location or additional licenses will be required.**

**FEES: \$25.00 per day.**

**ARIZONA STATUTES AND REGULATIONS:**

**ARS 4-203.02, 4-244, 4-261; Rule R19-1-228, R19-1-235, R19-1-309.**

**Disabled Individuals requiring special accommodations please call (602) 542-9027**

B U S I N E S S L I C E N S E L I S T  
SORTED BY: LICENSE NUMBER

ID	CODE	NAME	MAILING ADDRESS	PROPERTY ADDRESS
1392	CONT	ALM CONSTRUCTION INC	AARON MIDKIFF 612 M 3RD STREET CLARKDALE, AZ 86324	
	COMMENTS:	[REDACTED]		
1393	SERV	GREAT WESTERN SERVICES	JUSTIN DUMAS 3364 W MIDDLE CAMP VERDE, AZ 86322	
	COMMENTS:	[REDACTED]		
1394	RET	PIE TOWN SOAP & MOON PIES EMP	VICTORIA KEATING PO BOX 985 CLARKDALE, AZ 86326	545 S MAIN STREET
	COMMENTS:	[REDACTED]		
1395	CONT	E CO1 EXTERIORS LLC	JOSE RUELESS III 13370 W FOXFIRE #104 SURPRISE, AZ 85378	
	COMMENTS:	[REDACTED]		
1396	CONT	SOURCE REFRIGERATION & HVAC I	SHANNON ORTIZ 800 E ORANGETHORPE AVE ANAHEIM, CA 92801	800 E ORANGETHORPE AVE
	COMMENTS:	[REDACTED]		
1397	CONT	CUSTOM STEEL FABRICATION INC	BRIAN ANSLOACH 16772 W BELL RD SURPRISE, AZ 85374	16772 W BELL RD 110-44
	COMMENTS:	[REDACTED]		
1398	CONT	CES MOBILE HOME MOVERS LLC	JESUS CHACON 5621 S. NOGALES HWY TUCSON, AZ 85706	5621 S NOGALES HWY
1399	RET	REDBOX AUTOMATED RETAIL LLC	DAWN SHPARDSON 1 TOWER LANE STE 900 OAKBROOK TERRACE, IL 60181	565 W FINNIE FLAT RD
	COMMENTS:	[REDACTED]		
1400	CONT	BUILDINGS & BARNS INC	WRINFRED C TACKETT PO BOX 9144 MESA, AZ 00480	

TOTAL LICENSES: 9



Janice K. Brewer  
Governor

Bryan Martyn  
Executive Director



Board Members

Walter D. Armer, Jr., Vail, *Chair*  
Maria Baier, State Land Commissioner, *Vice Chair*  
Kay Daggett, Sierra Vista  
Alan Everett, Sedona  
Larry Landry, Phoenix  
William C. Scalzo, Phoenix  
Tracey Westerhausen, Phoenix

August 20, 2012

Mel Preston, M.ED. Economic Development Director  
Town of Camp Verde  
473 South Main Street  
Camp Verde, AZ 86322

Re: Contract No. PR11-071 Amendment 2; Ft. Verde SP Operation & Maintenance

Dear Mr. Preston:

Enclosed are two original copies of the above-mentioned amendment for your Town Mayor and Attorney review and signature. Please sign both originals and to return to my attention by September 19, 2012.

If you have any questions please feel free to contact myself at (602) 542-6925.

Sincerely,

*Louise Higuera*

Louise Higuera,  
Procurement Specialist

Enclosure

cc: Contract File



# INTERGOVERNMENTAL AGREEMENT AMENDMENT

Arizona State Parks  
 1300 W Washington  
 Phoenix, AZ 85007  
**Contracts Officer:**  
 Louise Higuera  
 Phone: (602) 542-6925  
 Email: lhiguera@azstateparks.gov

**Contract No.:** PR11-071

**Amendment No.:** 2

**Expires:** 9/30/12

**Title:** Ft. Verde State Park Operation & Maintenance

**Amendment Issued:** 8/10/12

**Contractor:** Town of Camp Verde

**Page:** 1 of 1

In accordance with the terms of this agreement, the following is amended as follows:

1. The purpose of this amendment is to extend the agreement in accordance with Section 2, Paragraph A., Duration, for the period of October 1, 2012 through December 31, 2012, unless earlier cancelled or terminated.
2. Section 3, Paragraph C. Add the following language to the end of paragraph: For October 1, 2012 to December 31, 2012 accept a donation of \$19,000 for the operation and routine maintenance for the PARK.

All other provisions of the Agreement shall remain in full force and effect.

### RESERVED FOR ARIZONA STATE PARKS

### RESERVED FOR TOWN OF CAMP VERDE

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Bryan Martyn, Director

Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Bob Burnside, Mayor

Typed Name and Title  
 Arizona State Parks Board

Typed Name and Title  
 Town of Camp Verde

Entity Name  
 1300 W. Washington

Entity Name  
 473 S. Main Street, Site 102

Address  
 Phoenix, AZ 85007

Address  
 Camp Verde, AZ 86322

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### RESERVED FOR THE ATTORNEY GENERAL

### RESERVED FOR TOWN OF CAMP VERDE ATTORNEY

Attorney General has been reviewed pursuant to A.R.S. 11-952 by the undersigned Assistant Attorney General who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those Parties to the Agreement represented by the Attorney General.

I have reviewed the Intergovernmental Agreement between Arizona State Parks Board and Town of Camp Verde and declare this agreement to be in proper form and within the powers of authority granted to the Town under the laws of the State of Arizona.

Tom Horne, The Attorney General, By:

*Aurri Hachtel* \_\_\_\_\_ *8-16-12* \_\_\_\_\_  
 Assistant Attorney General Date

William Sims, Town Attorney \_\_\_\_\_  
 Date

### BLANK

### RESERVED FOR THE TOWN CLERK



# INTERGOVERNMENTAL AGREEMENT AMENDMENT

Arizona State Parks  
1300 W Washington  
Phoenix, AZ 85007  
**Contracts Officer:**  
Louise Higuera  
Phone: (602) 542-6925  
Email: lhiguera@azstateparks.gov

**Contract No.:** PR11-071

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**Contractor:** Town of Camp Verde

**Page:** 2 of 1

I, Virginia Jones, Deputy Clerk of the Town of Camp Verde, do hereby certify that the foregoing and attached Intergovernmental Agreement between the Arizona State Parks Board and the Town of Camp Verde, was passed and adopted by the Town Council of the Town of Camp Verde, at the regular meeting held this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**ATTEST**

\_\_\_\_\_  
Virginia Jones, Deputy Clerk

\_\_\_\_\_  
Date



**Agenda Item Submission Form -- Section II**

**Meeting Date:** September 19<sup>th</sup>, 2012

Consent Agenda     Decision Agenda     Executive Session Requested

Presentation Only     Action/Presentation

**Requesting Department:** Town Manager

**Staff Resource/Contact Person:** Russ Martin

**Agenda Title (be exact):** Discussion, consideration, and possible approval of an Architectural Services Contract with Joel Westervelt Architect for services in preparation for construction of a new Town Library. Options include a standard contract for services or a "Green" option that would include application for LEED award level Silver.

**List Attached Documents:**

1. Standard AIA Contract w/o Green Technology/LEED Application including exhibits
2. Standard AIA Contract with Green Technology/LEED Application including exhibits
3. Why Build Green – LEED background information

**Estimated Presentation Time:** 5 minutes

**Estimated Discussion Time:** 10 minutes

**Reviews Completed by:**

**Department Head:** Russ Martin

**Town Attorney Comments:** Reviewed, this is a standard AIA contract no changes.

**Finance Department – N/A**

**Fiscal Impact:** Up to \$194,000 from the Library Building Fund

**Budget Code:** Library Building Fund **Amount Remaining:** \$795,000

**Comments:** This item is included in the FY 2012/2013 budget.

**Background Information:** Council has the option to consider these two or go out for Request for Qualifications from other firms. This firm has provided attached contracts that include an option that would do the application necessary to achieve LEED Certification at the Silver Level. Certainly, it is a more expensive option up front, however it could be a source of pride for Camp VERDE for a fairly small price

*that could be used in marketing and economic development including raising the bar for future development. It is also important to note that even without application for LEED specifically, the Town and this Architect still would make every effort to develop the most cost efficient and effective use of technology and design that is available for construction either way. In addition to the standard contract an energy model could be completed to determine the most efficient heating/cooling system for approximately another \$9,000 as a further detailed review of efficiency beyond the standard scope presented.*

**Recommended Action (Motion):** Move to approve standard contract for architectural services with Joel Westervelt.

**Instructions to the Clerk:**

### **Suggested Revisions and Additions to Architect Agreement**

Section 1.2 This section has been deleted. The Architect prepared the Initial Information and should be willing to accept its accuracy.

Section 3.4.1.1 If this agreement is to be used in conjunction with AIA Document A107-2007, *Standard Form of Agreement Between Owner and Contractor* please ask the Architect for a copy of that form.

Section 3.4.2.1 Please add in the second line after the word "completed": ". . . , (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, . . ."

Section 3.4.2.4 Please add the following clause at the end of the sentence: ". . . provided the Architect has complied with the standard of care set forth in Article II of this Agreement."

Section 6.4 This refers to bidding. What delivery method will you be using? Design/Bid/Build or CM @ Risk? If the latter, then there will not be bidding.

Section 7.3.1 The word "author" does not seem to be correct. Do you mean: ". . . without retaining the authorization from the Architect to use the Instruments of Service"?

Section 8.1.1 Please add the following as a new last sentence to this section: "The parties acknowledge that all claims are subject to A.R.S. Section 12-821.01 except that the parties agree that the time for filing any notice of claim or law suit shall run from the date that the cause of action accrues and shall not be extended for any period of mediation or arbitration."

Section 8.3.1.1 Please add in the third line following the word "limitations" the following: ". . . or notice of claim statute."

Section 9.2 Please insert the following clause at the beginning of the second sentence in line two: "If the suspension is not the result of the Architect's fault, . . ." Also, in the third line, after the first use of the word "services" replace the period with a comma and make the word "The" lower case: "the".

Section 9.7 If the Architect wants lost profits, we need to have some agreement as to the magnitude of that expense? Also, are lost profits consistent with Section 8.1.3 that says the parties are not entitle to consequential damages. My suggestion would be to delete the reference to lost profits.

New Section 9.8 "This Agreement is subject to termination pursuant to A.R.S. Section 38-511."

New Section 10.8 Architect is an independent Architect under this Agreement. Services provided by Architect pursuant to this Agreement shall be subject to the supervision of Architect. In providing such services, neither Architect nor its agents shall act as officers, employees, or agents of the Owner. This Agreement shall not constitute or make the parties a partnership or

joint venture. The Owner is not responsible for any debt, default, act or omission of the Architect.

New Section 10.9 Pursuant to Arizona Revised Statutes §§ 35-391.06 and 35-393.06, Architect certifies that it does not have a scrutinized business operation in either Sudan or Iran.

New Section 10.10 As required by Arizona Revised Statutes §41-4401, the Owner is prohibited from awarding a contract to any service or construction Architect who fails, or whose Subcontractors fail, to comply with Arizona Revised Statutes §23-214. The Architect warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its Subcontractors and sub-Subcontractors to provide the same warranties to the Architect. The Architect acknowledges that a breach of this warranty by Architect or by any Subcontractor or sub-Subcontractor under this Agreement shall be deemed a material breach of this Agreement, and is grounds for penalties, including termination of this Agreement, by the Owner. Owner retains the right to inspect the records of any Architect, Subcontractor and sub-Subcontractor employee who performs work under this Agreement, and to conduct random verification of the employment records of the Architect and any Subcontractor and sub-Subcontractor who works on this Agreement, to ensure that the Architect and each Subcontractor and sub-Subcontractor is complying with the warranties set forth above. Architect shall be responsible for all costs associated with compliance with this requirement.

New Section 10.11 The Owner and Architect agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. The Owner's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

New Section 10.12 The Architect shall comply with all federal state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

New Section 10.13 In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Owner of the Architect elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

New Section 10.14 The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has

been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

New Section 10.15 If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

New Section 10.16 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Arizona. Venue for litigation or any proceedings concerning this Agreement shall be in Yavapai County, Arizona.

New Section 10.17 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Owner and Architect.

New Section 10.18 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

Section 11.8.1 The Architect has proposed a list of reimbursable expenses. What the City is willing to pay is up to you. Listed below are expenses that other architects have excluded from the list of reimbursable expenses.

- Paper, pens, pencils, copier supplies, and computer media.
- Drafting supplies tools & equipment.
- Telephone and facsimile equipment, rental & toll charges.
- Office rental, utility, and other overhead expenses.
- Plan and specification reproduction costs for consulting review purposes.
- Postage and delivery costs.
- Use or rental of computer equipment or related supplies.

Section 11.9 Here the City is obligated to pay a fee to use the Architect's work product if the City terminates for convenience or the Architect terminates because the City suspended performance. This request is more understandable than the lost profit request (see Section 9.7 above). I would suggest agreeing to this provision, but opposing the lost profit provision.

Section 11.10.2 Please add the following clause in line two after the word "invoice": ". . . subject to the cap on fees set forth in Section 11.5 of this Agreement."

## **Possible Additional Provisions**

### **Construction Procurement Services**

- a. The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.
- b. The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any.

### **Proposals**

- a. Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.
- b. If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.
- c. The Architect shall organize and participate in selection interviews with prospective contractors or subcontractors and evaluate subcontractors proposals for components of GMP.
- d. The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors or subcontractors.
- e. If requested by the Owner, the Architect shall assist the Owner during negotiations of the Guaranteed Maximum Price (GMP). The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.

### **Meeting Minutes**

The Architect shall be responsible for providing written minutes of all project meetings that occur during the course of this work under this Agreement, which are attended by the Architect or his representative and by the representatives of the Owner. A copy of these minutes shall be sent to, and received by, the Owner no later than three (3) working days after the meeting date. The Architect will be responsible for final publishing and distribution of meeting minutes as directed by the Owner.



# AIA® Document B104™ – 2007

WJS MARK-UPS  
9/12/12

## *Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope*

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

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

Town of Camp Verde, Bob Burnside, Mayor  
473 South Main St., Ste. 102  
Camp Verde, AZ 86322

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

and the Architect:

(Name, legal status, address and other information)

Joel Westervelt Architect  
93 Arnold Street  
Camp Verde, AZ 86322  
928.567.2255

for the following Project:

(Name, location and detailed description)

Camp Verde Community Library  
130 N. Black Bridge Loop Road, Camp Verde, AZ  
Approx. 10,000 s.f. new Library Facility.

The Owner and Architect agree as follows.

init.

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**TABLE OF ARTICLES**

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

**ARTICLE 1 INITIAL INFORMATION**

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below 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, and other information relevant to the Project.)*

Building program is an approx. 10,000 s.f. new facility. Space will be occupied by Camp Verde Community Library.

Design scope will be based on conceptual plans prepared by Joel Westervelt Architect dated 15 April 2012.

It is to be noted that the interior layout will require additional modifications & Phase II will be approx. 12,000 s.f.

Site is about 2.5 acre located on Black Bridge Loop Road and Montezuma Castle Highway, Camp Verde, Arizona. Cost of the Work (construction) is approx. \$1,600,000.

Owner's consultants have not yet been determined. Architect's Anticipated Consultants are: 1. Structural Eng.....John W. Thompson, PE. 2. Mechanical, Plumbing & Electrical Eng...Mike Willis, PE 3. LEED Consultant..... John Neville, LEED-AP

§ 1.2 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**

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

**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.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 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. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 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 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and 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 Project requirements.

§ 3.2.3 The Architect shall consider the relative 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 schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

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

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

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

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

§ 3.3.4 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.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 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.

§ 3.4.1.3 Subject to Section 4.2, 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.

(i)  
§ 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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, [see insert].

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 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 3.4.2 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.

§ 3.4.3.2 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.

§ 3.4.4 Submittals

§ 3.4.4.1 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, techniques, sequences or procedures.

**§ 3.4.4.2** 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.

**§ 3.4.4.3** The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

#### **§ 3.4.5 Changes in the Work**

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 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### **§ 3.4.6 Project Completion**

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.

### **ARTICLE 4 ADDITIONAL SERVICES**

**§ 4.1** Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement. *(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)*

(See Attached Exhibit 'A')

**§ 4.2** 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

**§ 4.2.1** The Architect has included in Basic Services Twenty ( 20 ) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

**§ 4.2.2** The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within Eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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 furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 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.

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§ 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.

SEE COMMENT

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, 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.

SEE COMMENT

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining 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

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7

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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. 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 9.6.

### § 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 Mediation, 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. 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.

§ 8.2.3 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
- Litigation in a court of competent jurisdiction
- Other: (Specify)

**§ 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 the Agreement.

**§ 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. [insert]

**§ 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.

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

**§ 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.

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§ 9.8 (INSERT)

§ 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.

SEE COMMENT

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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 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 or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

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

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

Compensation shall be a stipulated sum of One Hundred Sixty One Thousand Dollars (\$161,000).

INSERT NEW SECTIONS 10.8, 10.9, 10.10, 10.11, 10.12, 10.13, 10.14, 10.15, 10.16, 10.17, and 10.18

§ 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.)*

Additional Services included in Section 4.1 shall be compensated as part of the fee enumerated in Section 11.1.

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

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates enumerated below or fixed sum as negotiated.

Architect - \$140 / hr. Draftsman - \$75 / hr. Engineer (Structural, Mechanical, Plumbing or Electrical)-\$125/ hr.  
 LEED Consultant - \$75 / hr.  
 Construction Administration - \$65 / hr.

§ 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 \_\_\_\_\_ 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:

Design Development Phase:	\$64,400	percent ( 40%)
Construction Documents Phase:	\$72,450	percent ( 45%)
Construction Phase:	\$8050	percent ( 5%)
Initial Payment	\$16,100	(10%)
<u>Total</u>	<u>\$161,000</u>	<u>(100%)</u>
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.

§ 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.)*

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates

Employee or Category	Rate
Architect	\$140/ hr.
Draftsman	\$75/ hr.
Engineer (Struct, Mech, Plumb, or Elect.)	\$125/ hr.
LEED Consultant	\$75/ hr.
Construction Administration	\$65/ hr.

§ 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;

*SEE COMMENT*

- .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 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and 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 plus Zero Percent percent ( 0 %) of the expenses incurred.

**§ 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:

Ten Percent (10%) of Compensation for Basic Services (Article 11.1) or Sixteen Thousand One Hundred Dollars (\$16,100).

{see comment}

**§ 11.10 Payments to the Architect**

**§ 11.10.1 An initial payment of**

Sixteen Thousand One Hundred Dollars

(\$ 16,100 ) 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.

{insert}

**§ 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 Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

18% per annum

**§ 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 off set 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:

[See attached Exhibit 'B' (12.1) regarding Reimbursable Expenses clarification]

[See attached Exhibit 'C' regarding Indemnification (12.2), Insurance requirements (12.3) & Termination Clause (12.4)]

**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 incorporates the following documents listed below:

*(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

N/A

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

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

Bob Burnside, Mayor of the Town of Camp Verde

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

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

Joel Westervelt, Architect

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

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## Virginia Jones

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**From:** Debbie Barber  
**Sent:** Wednesday, September 19, 2012 3:39 PM  
**To:** Virginia Jones  
**Subject:** FW: Joel Westervelt Architect, Library Contract Documents, 9-19-2012  
**Attachments:** Attorney comments with Architect response, 9-19-12.pdf; CV Library schedule, 9-19-2012.pdf; Joel Westervelt, Architect - Camp Verde Library Contract, 9-19-2012-with Exhibits.pdf

**From:** Joel Westervelt [<mailto:jwverde@hotmail.com>]  
**Sent:** Wednesday, September 19, 2012 1:03 PM  
**To:** Russ Martin; Debbie Barber  
**Cc:** Joel Westervelt  
**Subject:** Joel Westervelt Architect, Library Contract Documents, 9-19-2012

Hi Russ and Debbie,

Here is the revised contract that has the Attorney recommendations included. The red items are changes to the basic AIA document. Hopefully this makes it clearer.

I have included the Attorney comment sheet with my notes so you can follow what was modified or added.

Lastly, attached is a proposed schedule for design & construction of the Library.  
Let me know if you have any questions.

Thank you,

Joel Westervelt Architect  
928.567.2255

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***Effective August 27, 2012, Hours of operations for all Town offices are Monday - Thursday 7 am to 5 pm and Friday 7 am to 11 am.***

All messages created in this system belong to the Town of Camp Verde and should be considered a public record subject to disclosure under the Arizona Public Records Law (A.R.S. 39-171). Town employees, Town public officials, and those who generate email to them, should have no expectation of privacy related to the use of this technology.

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Please consider our environment before printing this email. 

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***Effective August 27, 2012, Hours of operations for all Town offices are Monday - Thursday 7 am to 5 pm and Friday 7 am to 11 am.***

## Suggested Revisions and Additions to Architect Agreement

Section 1.2 This section has been deleted. The Architect prepared the Initial Information and should be willing to accept its accuracy. **(done)**

Section 3.4.1.1 If this agreement is to be used in conjunction with AIA Document A107-2007, *Standard Form of Agreement Between Owner and Contractor* please ask the Architect for a copy of that form. **(done- removed.)**

Section 3.4.2.1 Please add in the second line after the word “completed”: “. . . , (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, . . .” **(done)**

Section 3.4.2.4 Please add the following clause at the end of the sentence: “. . . provided the Architect has complied with the standard of care set forth in Article II of this Agreement.” **(done)**

Section 6.4 This refers to bidding. What delivery method will you be using? Design/Bid/Build or CM @ Risk? If the latter, then there will not be bidding. **(Design/Bid/Build—no revs made.)**

Section 7.3.1 The word “author” does not seem to be correct. Do you mean: “. . . without retaining the authorization from the Architect to use the Instruments of Service”? **(Added 'the author')**

Section 8.1.1 Please add the following as a new last sentence to this section: “The parties acknowledge that all claims are subject to A.R.S. Section 12-821.01 except that the parties agree that the time for filing any notice of claim or law suit shall run from the date that the cause of action accrues and shall not be extended for any period of mediation or arbitration.” **(done)**

Section 8.3.1.1 Please add in the third line following the word “limitations” the following: “. . . or notice of claim statute.” **(done)**

Section 9.2 Please insert the following clause at the beginning of the second sentence in line two: “If the suspension is not the result of the Architect’s fault, . . .” Also, in the third line, after the first use of the word “services” replace the period with a comma and make the word “The” lower case: “the”. **(done)**

Section 9.7 If the Architect wants lost profits, we need to have some agreement as to the magnitude of that expense? Also, are lost profits consistent with Section 8.1.3 that says the parties are not entitle to consequential damages. My suggestion would be to delete the reference to lost profits. **(done- removed sentence on lost profits.)**

New Section 9.8 “This Agreement is subject to termination pursuant to A.R.S. Section 38-511.” **(done)**

New Section 10.8 Architect is an independent Architect under this Agreement. Services provided by Architect pursuant to this Agreement shall be subject to the supervision of Architect. In providing such services, neither Architect nor its agents shall act as officers, employees, or agents of the Owner. This Agreement shall not constitute or make the parties a partnership or joint venture. The Owner is not responsible for any debt, default, act or omission of the Architect. **(done- added part about representing the Owner per Section 3.4)**

New Section 10.9 Pursuant to Arizona Revised Statutes §§ 35-391.06 and 35-393.06, Architect certifies that it does not have a scrutinized business operation in either Sudan or Iran.

**(done)**

New Section 10.10 As required by Arizona Revised Statutes §41-4401, the Owner is prohibited from awarding a contract to any service or construction Architect who fails, or whose Subcontractors fail, to comply with Arizona Revised Statutes §23-214. The Architect warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its Subcontractors and sub-Subcontractors to provide the same warranties to the Architect. The Architect acknowledges that a breach of this warranty by Architect or by any Subcontractor or sub-Subcontractor under this Agreement shall be deemed a material breach of this Agreement, and is grounds for penalties, including termination of this Agreement, by the Owner. Owner retains the right to inspect the records of any Architect, Subcontractor and sub-Subcontractor employee who performs work under this Agreement, and to conduct random verification of the employment records of the Architect and any Subcontractor and sub-Subcontractor who works on this Agreement, to ensure that the Architect and each Subcontractor and sub-Subcontractor is complying with the warranties set forth above. Architect shall be responsible for all costs associated with compliance with this requirement.

**(done)**

New Section 10.11 The Owner and Architect agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. The Owner's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**(done)**

New Section 10.12 The Architect shall comply with all federal state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

**(done)**

New Section 10.13 In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Owner of the Architect elects to terminate this Agreement. An election to terminate this Agreement based

upon this provision shall be made within seven (7) days after the finding by the court becomes final. **(done)**

New Section 10.14 The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. **(done)**

New Section 10.15 If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect. **(done)**

New Section 10.16 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Arizona. Venue for litigation or any proceedings concerning this Agreement shall be in Yavapai County, Arizona. **(done)**

New Section 10.17 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Owner and Architect. **(done)**

New Section 10.18 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. **(done)**

Section 11.8.1 The Architect has proposed a list of reimbursable expenses. What the City is willing to pay is up to you. Listed below are expenses that other architects have excluded from the list of reimbursable expenses.

- Paper, pens, pencils, copier supplies, and computer media.
- Drafting supplies tools & equipment.
- Telephone and facsimile equipment, rental & toll charges.
- Office rental, utility, and other overhead expenses.
- ~~Plan and specification reproduction costs for consulting review purposes.~~
- ~~Postage and delivery costs.~~
- Use or rental of computer equipment or related supplies.

**(done- slight revision for Exhibit 'B')**

Section 11.9 Here the City is obligated to pay a fee to use the Architect's work product if the City terminates for convenience or the Architect terminates because the City suspended

performance. This request is more understandable than the lost profit request (see Section 9.7 above). I would suggest agreeing to this provision, but opposing the lost profit provision.

**(done- removed sentence on lost profits, Section 9.7.)**

Section 11.10.2 Please add the following clause in line two after the word "invoice": "The invoice shall be subject to the cap on fees set forth in Section 11.5 of this Agreement." **(done)**

### **Possible Additional Provisions (These are added to new Exhibit 'D')**

#### Construction Procurement Services

- a. The Architect shall assist the Owner in establishing a list of prospective bidders or contractors. **(done)**
- b. The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. **(done)**

#### Proposals

- a. Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings. **(done)**
- b. If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses. **(done)**
- c. The Architect shall organize and participate in selection interviews with prospective contractors or subcontractors and evaluate subcontractors proposals for components of GMP. **(done- note slight revision)**
- d. The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors or subcontractors. **(done)**
- e. If requested by the Owner, the Architect shall assist the Owner during negotiations of the Guaranteed Maximum Price (GMP). The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner. **(done- note slight revision)**

#### Meeting Minutes

The Architect shall be responsible for providing written minutes of all project meetings that occur during the course of this work under this Agreement, which are attended by the Architect or his representative and by the representatives of the Owner. A copy of these minutes shall be sent to, and received by, the Owner no later than three (3) working days after the meeting date. The Architect will be responsible for final publishing and distribution of meeting minutes as directed by the Owner. **(Not added—Note that meeting minutes will be provided by Contractor.)**

# AIA<sup>®</sup> Document B104<sup>™</sup> - 2007

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

AGREEMENT made as of the **Twenty Fifth** day of **August** in the year **Two  
Thousand Twelve**

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

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

**Town of Camp Verde**  
**Bob Burnside, Mayor**  
**473 South Main St., Ste. 102**  
**Camp Verde, AZ 86322**

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

**Joel Westervelt, Architect**  
**93 Arnold Street**  
**Camp Verde, AZ 86322**  
**928.567.2255**

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

**Camp Verde Community Library**  
**130 N. Black Bridge Loop Road**  
**Camp Verde, Arizona**  
**Approx. 10,000 s.f. new Library Facility.**

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

**ELECTRONIC COPYING** of any portion of this AIA<sup>®</sup> Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

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

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

Building program is an approx. 10,000 s.f. new facility. Space will be occupied by Camp Verde Community Library. Design scope will be based on conceptual plans prepared by Joel Westervelt Architect dated 15 April 2012. It is to be noted that the interior layout will require additional modifications & Phase II will be approx. 12,000 s.f. Site is about 2.5 acre located on Black Bridge Loop Road and Montezuma Castle Highway, Camp Verde, Arizona. Cost of the Work (construction) is approx. \$1,600,000.

Owner's consultants have not yet been determined. Architect's Anticipated Consultants are: 1. Structural Eng. John W. Thompson, PE. 2. Mechanical, Plumbing & Electrical Eng. Mike Willis, PE. 3. LEED Consultant John Neville, LEED-AP.

~~§ 1.2 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

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

## 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.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 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. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 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 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and 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 Project requirements.

§ 3.2.3 The Architect shall consider the relative 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 schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

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

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

### § 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

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

§ 3.3.4 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.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

## § 3.4 CONSTRUCTION PHASE SERVICES

### § 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below. ~~and in AIA Document A107™ - 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107 - 2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

§ 3.4.1.2 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.

§ 3.4.1.3 Subject to Section 4.2, 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.

### § 3.4.2 EVALUATIONS OF THE WORK

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, (i) to become generally familiar with the progress and quality of the portion of the Work completed, (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, and (iii) to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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, ~~provided the Architect has complied with the standard of care set forth in Article II of this Agreement.~~

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.4.3.1 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 3.4.2 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.

§ 3.4.3.2 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.

#### § 3.4.4 SUBMITTALS

§ 3.4.4.1 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, techniques, sequences or procedures.

§ 3.4.4.2 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.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

#### § 3.4.5 CHANGES IN THE WORK

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 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### § 3.4.6 PROJECT COMPLETION

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.

### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

*(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)*

(See Attached Exhibit 'A')

§ 4.2 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services **twenty** ( **20** ) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within **eighteen** ( **18** ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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 furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, 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. **The parties acknowledge that all claims are subject to A.R.S. Section 12-821.01 except that the parties agree that the time for filing any notice of claim or law suit shall run from the date that the cause of action accrues and shall not be extended for any period of mediation or arbitration."**

§ 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 A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. 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 9.6.

## **§ 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** Mediation, 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. 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.

**§ 8.2.3** 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

Litigation in a court of competent jurisdiction

Other (*Specify*)

## **§ 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 the Agreement.

**§ 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 **or notice of claim statute**. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

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

### § 8.3.4 CONSOLIDATION OR JOINDER

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

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

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

## 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. ~~If the suspension is not the result of the Architect's fault, 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 This Agreement is subject to termination pursuant to A.R.S. Section 38-511.

## 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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 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 or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

§ 10.8 Architect is an independent Architect under this Agreement. Services provided by Architect pursuant to this Agreement shall be subject to the supervision of Architect. In providing such services, neither Architect nor its agents shall act as officers, employees, or agents of the Owner except as outlined in Section 3.4. This Agreement shall not constitute or make the parties a partnership or joint venture. The Owner is not responsible for any debt, default, act or omission of the Architect.

§ 10.9 Pursuant to Arizona Revised Statutes §§ 35-391.06 and 35-393.06, Architect certifies that it does not have a scrutinized business operation in either Sudan or Iran.

§ 10.10 As required by Arizona Revised Statutes §41-4401, the Owner is prohibited from awarding a contract to any service or construction Architect who fails, or whose Subcontractors fail, to comply with Arizona Revised Statutes §23-214. The Architect warrants that it complies fully with all federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its Subcontractors and sub-Subcontractors to provide the same warranties to the Architect. The Architect acknowledges that a breach of this warranty by Architect or by any Subcontractor or sub-Subcontractor under this Agreement shall be deemed a material breach of this Agreement, and is grounds for penalties, including termination of this Agreement, by the Owner. Owner retains the right to inspect the records of any Architect, Subcontractor and sub-Subcontractor employee who performs work under this Agreement, and to conduct random verification of the employment records of the Architect and any Subcontractor and sub-Subcontractor who works on this Agreement, to ensure that the Architect and each Subcontractor and sub-Subcontractor is complying with the warranties set forth above. Architect shall be responsible for all costs associated with compliance with this requirement.

§ 10.11 The Owner and Architect agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. The Owner's failure to

enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**§ 10.12** The Architect shall comply with all federal state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

**§ 10.13** In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless Owner of the Architect elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

**§ 10.14** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

**§ 10.15** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect.

**§ 10.16** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Arizona. Venue for litigation or any proceedings concerning this Agreement shall be in Yavapai County, Arizona.

**§ 10.17** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Owner and Architect.

**§ 10.18** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

## ARTICLE 11 COMPENSATION

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

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

Compensation shall be a stipulated sum of One Hundred Sixty One Thousand Dollars (\$161,000)

**§ 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.)*

Additional Services included in Section 4.1 shall be compensated as part of the fee enumerated in Section 11.1

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

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates enumerated below or fixed sum as negotiated.  
 Architect - \$140 / hr. Draftsman - \$75 / hr. Engineer (Structural, Mechanical, Plumbing or Electrical)-\$125/ hr.  
 LEED Consultant - \$75 / hr.  
 Construction Administration - \$65 / hr.

§ 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:

Design Development Phase	\$64,400	percent (	40	%)
Construction Documents Phase	\$72,450	percent (	45	%)
Construction Phase	\$8050	percent (	5	%)
<b>Initial Payment</b>	<b>\$16,100</b>	percent (	<b>10</b>	<b>%)</b>
<b>Total Basic Compensation</b>	<b>\$161,000</b>			<b>(100%)</b>

§ 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.

§ 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.)*

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates

Employee or Category	Rate
Architect	\$140 -- hr.
Draftsman	\$75 -- hr.
Engineer (Struct, Mech, Plumb, or Elect.)	\$125 -- hr.
LEED Consultant -	\$75 / hr.
Construction Administration	\$65 -- hr.

### § 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;

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User Notes:

(3077682302)

- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and 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 plus **zero percent ( 0% )** of the expenses incurred.

**§ 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:

**Ten Percent (10%) of Compensation for Basic Services (Article 11.1) or Sixteen Thousand One Hundred Dollars (\$16,100)**

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of **Sixteen Thousand One Hundred Dollars (\$ 16,100 )** 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 **subject to the cap on fees set forth in Section 11.5 of this Agreement**. Amounts unpaid **Thirty ( 30 )** days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

**18% per annum**

§ 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 off set 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:

- [See attached Exhibit 'B' (12.1) regarding Reimbursable Expenses clarification]
- [See attached Exhibit 'C' regarding Indemnification (12.2), Insurance requirements (12.3) & Termination Clause (12.4)]
- [See attached Exhibit 'D' regarding Bidding Negotiation Clarification.]

**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 incorporates the following documents listed below:  
*(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

N/A

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

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*  
**Bob Burnside, Mayor of the Town of Camp Verde**  
\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*  
**Joel Westerveit, Architect**  
\_\_\_\_\_  
*(Printed name and title)*

**APPROVED AS TO FORM**

\_\_\_\_\_  
*(Signature)*  
**Attorney for the Town of Camp Verde**  
\_\_\_\_\_  
*(Printed name and title)*

## **Exhibit 'A'**

### **Additional Services:**

#### **Additional Services included in this contract are as follows:**

1. Coordination of the Owner's Consultants
2. Landscape and Irrigation System Design
3. Comcheck energy calculations per the ICC: HVAC, plumbing, building envelope and electrical
4. Interface considerations for Phase II structure.

#### **Additional Services not included are as follows:**

1. Civil, Floodway Engineering, Grading & Utility Design shall be provided by the Owner's Consultant.
2. Surveying, including Topo, Tree & Boundary with all site features shall be provided by the Owner's Consultant.
3. Special Floodway Design requirements by FEMA.
4. Phase II Design and Engineering.
5. Fire Protection & Fire Alarm System shall be Design-Build by Contractor.
6. Soils Testing shall be provided by the Owner's Consultant.
7. Interior Design of an intensive scope.
8. Special Equipment design & engineering including Active Solar System shall be provided by the Owner's Consultant or as a Design/Build package.
9. Special Inspections shall be provided by the Contractor.
10. Life cycle analysis: None anticipated.
11. LEED Certification, including LEED related application fees.
12. Building modeling and energy use/loss reports.

## **Exhibit 'B'**

### **§12.1 Clarification to Item 11.8 Compensation for Reimbursable Expenses:**

**.1** Transportation and authorized out-of-town travel and subsistence;  
**(NONE ANTICIPATED)**

**.2** Long distance services, dedicated data and communication services, teleconferences, Project Websites, and extranets;  
**(NONE ANTICIPATED)**

**.3** Fees paid for securing approval of authorities having jurisdiction over the Project;

**.4** Printing, reproductions, plots, standard form documents;  
**(ESTIMATED AT \$1900.)**

**.5** Postage, handling and delivery;  
**(ESTIMATED AT \$150)**

**.6** Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;  
**(NONE ANTICIPATED)**

**.7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;  
**(NONE ANTICIPATED)**

**.8** Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's Consultants  
**(NONE ANTICIPATED)**

**.9** All taxes levied on professional services and on reimbursable expenses;

**.10** Site office expenses; and

**.11** Other similar Project-related expenditures. \*

**.11** Plan and specification reproduction costs for consulting review purposes. **(INCLUDED IN ITEM 4. ESTIMATE ABOVE)**

#### **The following items are excluded from reimbursable expenses:**

- Paper, pens, pencils, copier supplies, and computer media.
- Drafting supplies tools & equipment.
- Telephone and facsimile equipment, rental & toll charges.
- Office rental, utility, and other overhead expenses.
- Use or rental of computer equipment or related supplies.

## Exhibit 'C'

### §12.2 \_\_\_ INDEMNIFICATION

.1 To the fullest extent permitted by law, Architect shall defend, indemnify, and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expense, including but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omission or mistakes relating to the performance of the Contract Documents. Architect's duty to defend, indemnify and hold harmless Owner, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damages, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, caused by any negligent acts, errors, omission or mistakes Architect may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be constructed as limiting the scope of the indemnity in this paragraph.

.2 Abrogation of Arizona Revised Statutes Section 34-226:

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, Architect shall defend, indemnify and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from Architect's work or services. Architect's duty to defend, indemnify and hold harmless, Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of Architect, anyone Architect directly or indirectly employs or anyone for whose acts Architect may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including Owner.

.3 The scope of this indemnification does not extend to the sole negligence of Owner.

.4 Obligations under this Section 12.1- shall survive termination of this Agreement.

## §12.3 INSURANCE REQUIREMENTS

### .1 General Requirements

a. Architect, at Architect's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of *at least A*. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of Owner. The form of any insurance policies and forms must be acceptable to Owner.

b. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of Owner, constitute a material breach of this Contract.

c. Architect's insurance shall be primary insurance as respects Owner, and any insurance or self-insurance maintained by Owner shall not contribute to it.

d. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect Owner.

e. The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided by Owner under such policies. Architect shall be solely responsible for the deductible and/or self-insured retention and Owner, at its option, may require Architect to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

f. Owner reserves the right to review any or all of the herein required insurance policies and/or endorsements. Owner shall not be obligated, however, to review such policies and/or endorsements or to advise Architect of any deficiencies in such policies and endorsements, and such review shall not relieve Architect from, or be deemed a waiver of District's right to insist on strict fulfillment of Architect's obligations under this Contract.

g. The insurance policies required by this Contract, except Workers' Compensation and Professional Liability, shall name the Owner and its agents, representatives, officers, directors, officials and employees as Additional Insureds.

h. The policies required hereunder, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer of rights of recovery (subrogation) against the Owner and its agents, representatives, officers, directors, officials and employees for any claims arising out of Architect's work or service.

### .2 Commercial General Liability

a. Architect shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

b. The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

c. The CGL and the commercial umbrella coverage, if any, additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 10 01, and shall include coverage for Architect's operations and products.

**Exhibit 'C' (P.3 of 3)**

**.3 Automobile Liability**

Architect shall maintain Automobile Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Architect's vehicles (including owned, hired, non-owned), assigned to or used in the performance of this Contract. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damages shall apply.

**.4 Workers' Compensation**

a. Architect shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Architect's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

b. Architect waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Architect pursuant to this agreement.

c. In case any work is subcontracted, Architect will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Architect.

**.5 Professional Liability**

The Architect retained by the Owner to provide the work or service required by this Contract shall maintain Professional Liability insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the Architect, or any person employed by the Architect, with a limit of not less than \$1,000,000 each claim.

**CERTIFICATES OF INSURANCE**

.1 Prior to commencing work or services under this Contract, Architect shall furnish Owner with Certificates of Insurance in a form acceptable to the Owner, or formal endorsements as required by the Contract. As evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect. Such certificates shall identify this contract number and title.

.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Architect's work or services and as evidenced by annual Certificates of Insurance.

.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to Owner fifteen (15) days prior to the expiration date.

**CANCELLATION AND EXPIRATION NOTICE**

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to Owner.

**§12.4 ADDITIONAL TERMINATION CLAUSE**

This Agreement is subject to termination under ARS Section 38-511.

## **Exhibit 'D'**

### **Bidding Negotiation Clarification.**

#### **Construction Procurement Services**

- a. The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.
- b. The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any.

#### **Proposals**

- a. Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.
- b. If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.
- c. The Architect shall assist the Owner in organizing shortlisted selection interviews with prospective contractors or subcontractors and evaluate subcontractors proposals for components of GMP. This process shall be organized by the Owner. Participation by the Architect in more than three (3) interviews shall be considered Additional Services.
- d. The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors or subcontractors.
- e. If requested by the Owner, the Architect shall assist the Owner during negotiations of the Guaranteed Maximum Price (GMP).

<b>Summary:</b>			
Start Date:	5-Oct-12	Total Calendar Days:	601 Days
Finish Date:	29-May-14	Total Calendar Weeks:	86 Weeks

19-Sep-12

**\*Estimated Schedule of Work:**

- Contract Execution**
- Conceptual Design:**  
Site Investigation/ documentation, Survey, Program Analysis, Initial design concept, Owner approval required prior to proceeding to subsequent phase.
- D. R. Package preparation:**  
Includes Preliminary Design drawings
- Design Review Package submittal:**  
Town of Camp Verde D.R. review—assumes an expedited process.
- Design Review Meeting:**  
Also, other agency reviews if required.
- Design Development Phase:**  
Develop Design concept among Architectural/ Engineering Disciplines; Owner approval required prior to proceeding to subsequent phase.
- Construction Documents**  
Finalize plans/specifications; coordination w/ Engineering (Civil, Structural, Mechanical, Plumbing & Electrical) & other Consultants
- Bid Negotiations/ Building Permit application Period**  
Submit plans to Town of Camp Verde Building Dept.
- Break Ground**
- Construction Phase:**  
Administration of Construction Contract; Submittal Reviews; Attend Construction Meetings; Perform Construction Observations
- Final Certificate of Occupancy**

Start Date	Duration	October-12	November-12	December-12	January-13	February-13	March-13	April-13	May-13	June-13	July-13	August-13	September-13	October-13	November-13	December-13	January-14	February-14	March-14	April-14	May-14
5-Oct-12	1	█																			
05-Oct-12	30	█																			
04-Nov-12	10		█																		
14-Nov-12	10		█																		
14-Nov-12	10			█																	
19-Nov-12	45		█	█																	
03-Jan-13	90				█	█															
03-Apr-13	60							█	█												
02-Jun-13	1									█											
03-Jun-13	360									█	█	█	█	█	█	█	█	█	█	█	█
29-May-14	1																				█

**\*Notes:**

Schedule assumes a contract execution date of: **5-Oct-12**  
 Time estimates may vary due to conditions/ variables out of the Architect's control. ( ie. prompt decision making, length of design & permit review process, construction time.)

Bob Burnside, Mayor of the Town of Camp Verde

(Date)

Joel Westervelt, Architect

(Date)

P 44

## **CAMP VERDE LIBRARY**

### **Why a Green Building?**

The built environment has a profound impact on our natural environment, economy, health, and productivity.

In the United States alone, buildings account for:

- 72% of electricity consumption,
- 39% of energy use,
- 38% of all carbon dioxide (CO<sub>2</sub>) emissions,
- 40% of raw materials use,
- 30% of waste output (136 million tons annually), and
- 14% of potable water consumption.

### **Benefits of Green Building**

**Environmental benefits:**

- Enhance and protect ecosystems and biodiversity
- Improve air and water quality
- Reduce solid waste
- Conserve natural resources

**Economic benefits:**

- Reduce operating costs
- Enhance asset value and profits
- Improve employee productivity and satisfaction
- Optimize life-cycle economic performance

**Health and community benefits:**

- Improve air, thermal, and acoustic environments
- Enhance occupant comfort and health
- Minimize strain on local infrastructure
- Contribute to overall quality of life

### **Why Go LEED?**

LEED-certified buildings are designed to:

- Lower operating costs and increase asset value.
- Reduce waste sent to landfills.
- Conserve energy and water.
- Be healthier and safer for occupants.
- Reduce harmful greenhouse gas emissions.
- Demonstrate commitment to a healthy community.

## Some Data

### Study of 12 LEED federal facilities in 2008

- 33% less carbon emissions,
- consume 26% less energy and
- use 3% less water, on average, than all U.S. commercial buildings
- employees were 29% more satisfied with their working conditions than other employees

## How LEED works

Here's how LEED certification works – a common sense approach to construction for any building – if you want to avoid cost overruns and get the building you pay for.

- Design team steps through the project and selects the LEED credits that have the greatest benefits for the lowest costs
- If it is determined that LEED certification is achievable, project is registered with USGBC
- Project team plots out Action Plan based on LEED Matrix
- Research grant and other funding opportunities – utilities, government and others
- Create energy and water performance models – baseline and targets
- Research and specify building components
- Confirm the design complies with LEED goals
- Make certain all construction specifications contain LEED requirements
- Make certain all bids conform to LEED requirements
- All design and construction members step through process to be sure everyone knows their project and LEED responsibilities
- Monitor construction and collect required documentation
- Perform commissioning
- Provide O & M documentation
- Monitor building performance to insure performance

## Proposed Building Technologies for LEED Certification

1. Sustainable Sites – reuse of existing, developed site, bike racks and shower, preferred parking for energy efficient vehicles, heat reflecting roof and dark skies lighting
2. Water Efficiency – water efficient fixtures, low-water landscaping
3. Energy & Atmosphere – good insulation (walls & roof), upgrade windows, Energy Star heating/cooling equipment, photovoltaic solar panel for some electricity, solar hot water, green energy purchases, commissioning – make sure everything is working just right – possibility for ground-source heating/cooling from local vendor
4. Materials & Resources – reuse of most of the existing building, reuse of some used materials, some recycled content in materials, certified wood products
5. Indoor Environmental Quality – good construction management to reduce air emissions, low-emitting building materials (paints, carpets, adhesives, sealers, wood products), daylighting, thermal controls
6. Innovation & Design – we'll see what we come up with

## **Incentives, Tax Breaks**

APS offers energy efficiency incentives

- standards match LEED
- tied to the amount of energy savings achieved
- will pay for half of the energy modeling or energy auditing costs
- incentives for high performing windows, for energy efficient HVAC and other devices, such as occupancy sensors that control the lighting

No Tax Breaks for Municipalities

- designer may receive a tax deduction for energy efficient construction and installation of renewable energy systems
- designer may pass along those savings to the community

For example, the designer could deduct \$1.80 per square foot for expenditures on energy efficiency for a building. In this case, that could amount to just over \$10,000. Those deductions could help offset some of the additional costs for higher quality insulation and windows, for instance.

## **Costs/Benefits**

Additional costs for green buildings vary depending upon the level of LEED certification.

The higher the performance – the higher the upfront costs – the greater the savings

Study – LEED academic buildings in California

- additional costs for certification varied from 1% to 10% above traditional construction estimates – depending upon the level of certification
- basic LEED certified buildings cost less than Platinum buildings
- larger and more expensive projects than this project

Study of GSA LEED certified buildings

- additional costs 1 to 8%

## **Camp Verde Library LEED Estimate**

Additional cost of 10-20% to achieve LEED certification

Possibly higher to achieve LEED Silver – the standard for Arizona Public Buildings

- Smaller project
- Administrative costs similar to larger project
- Percentage of smaller budgets are higher than larger budgets
- Longer return on investment – lower energy costs with smaller building

## **Option – Energy Star Building**

Different process

- set goals for building
- audit building and compare with prior performance or with other buildings
- 12 month process to prove Energy Star rating
- Lower costs for administration
- Similar costs for building upgrades

## **Why Go LEED?**

### **Set the Standard for the Development of Your Community**

**If the town goes LEED with their buildings -- developers will more likely propose LEED buildings as you redevelop and grow your community**

**Better for the community -- less impacts on the natural environment -- especially the Verde River**

**You have one LEED Silver Building in town -- the Forest Service building**

**Will they be the only LEED building in Camp Verde -- a Federal building?**

**Demonstrate the commitment of Camp Verde to its community and the spectacular, fragile natural environment**

**Enhance community reputation**



# AIA<sup>®</sup> Document B104<sup>™</sup> – 2007

w/o GREEN

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

AGREEMENT made as of the Twenty Fifth day of August in the year Two Thousand Twelve  
*(In words, indicate day, month and year.)*

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

Town of Camp Verde, Bob Burnside, Mayor  
473 South Main St., Ste. 102  
Camp Verde, AZ 86322

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

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

Joel Westervelt Architect  
93 Arnold Street  
Camp Verde, AZ 86322  
928.567.2255

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

Camp Verde Community Library  
130 N. Black Bridge Loop Road, Camp Verde, AZ  
Approx. 10,000 s.f. new Library Facility.

The Owner and Architect agree as follows.

Init.

## TABLE OF ARTICLES

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

### ARTICLE 1 INITIAL INFORMATION

#### § 1.1 This Agreement is based on the Initial Information set forth below:

*(State below 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, and other information relevant to the Project.)*

Building program is an approx.10,000 s.f. new facility. Space will be occupied by Camp Verde Community Library.

Design scope will be based on conceptual plans prepared by Joel Westervelt Architect dated 15 April 2012.

It is to be noted that the interior layout will require additional modifications & Phase II will be approx. 12,000 s.f.

Site is about 2.5 acre located on Black Bridge Loop Road and Montezuma Castle Highway, Camp Verde, Arizona. Cost of the Work (construction) is approx. \$1,600,000.

Owner's consultants have not yet been determined. Architect's Anticipated Consultants are: 1. Structural Eng.....John W. Thompson, PE. 2. Mechanical, Plumbing & Electrical Eng...Mike Willis, PE 3. LEED Consultant..... John Neville, LEED-AP

§ 1.2 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

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

### 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.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 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. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 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 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and 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 Project requirements.

§ 3.2.3 The Architect shall consider the relative 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 schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

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

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

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

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

§ 3.3.4 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.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 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.

§ 3.4.1.3 Subject to Section 4.2, 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.

#### § 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

#### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 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 3.4.2 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.

§ 3.4.3.2 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.

#### § 3.4.4 Submittals

§ 3.4.4.1 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, techniques, sequences or procedures.

§ 3.4.4.2 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.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

#### § 3.4.5 Changes in the Work

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 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### § 3.4.6 Project Completion

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.

### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

*(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)*

(See Attached Exhibit 'A')

§ 4.2 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services Twenty ( 20 ) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within Eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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 furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, 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 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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. 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 9.6.

### § 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 Mediation, 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. 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.

§ 8.2.3 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
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 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 the Agreement.

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

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

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

### § 8.3.4 Consolidation or Joinder

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

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

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

## 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 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.

#### 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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 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 or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

#### ARTICLE 11 COMPENSATION

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

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

**Compensation shall be a stipulated sum of One Hundred Sixty One Thousand Dollars (\$161,000).**

§ 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.)*

Additional Services included in Section 4.1 shall be compensated as part of the fee enumerated in Section 11.1.

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

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates enumerated below or fixed sum as negotiated.

Architect - \$140 / hr. Draftsman - \$75 / hr. Engineer (Structural, Mechanical, Plumbing or Electrical)-\$125/ hr.

LEED Consultant - \$75 / hr.

Construction Administration - \$65 / hr.

§ 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 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:

Design Development Phase:	\$64,400	percent ( 40%)
Construction Documents Phase:	\$72,450	percent ( 45%)
Construction Phase:	\$8050	percent ( 5%)
Initial Payment	\$16,100	(10%)
<u>Total</u>	<u>\$161,000</u>	<u>(100%)</u>
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.

§ 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.)*

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates

Employee or Category	Rate
Architect	\$140/ hr.
Draftsman	\$75/ hr.
Engineer (Struct, Mech, Plumb, or Elect.)	\$125/ hr.
LEED Consultant	\$75/ hr.
Construction Administration	\$65/ hr.

**§ 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;

Init.

- .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 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and 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 plus Zero Percent percent ( 0 % ) of the expenses incurred.

**§ 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:

Ten Percent (10%) of Compensation for Basic Services (Article 11.1) or Sixteen Thousand One Hundred Dollars (\$16,100).

**§ 11.10 Payments to the Architect**

**§ 11.10.1 An initial payment of**

Sixteen Thousand One Hundred Dollars

(\$16,100 ) 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 Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.**

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

18% per annum

**§ 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 off set 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:

[See attached Exhibit 'B' (12.1) regarding Reimbursable Expenses clarification]

[See attached Exhibit 'C' regarding Indemnification (12.2), Insurance requirements (12.3) & Termination Clause (12.4)]

**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 incorporates the following documents listed below:

*(List other documents, if any, including additional scopes of service and AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

N/A

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

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

Bob Burnside, Mayor of the Town of Camp Verde

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

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

Joel Westervelt, Architect

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

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## **Exhibit 'A'**

### **Additional Services:**

#### **Additional Services included in this contract are as follows:**

1. Coordination of the Owner's Consultants
2. Landscape and Irrigation System Design
3. Comcheck energy calculations per the ICC: HVAC, plumbing, building envelope and electrical
4. Interface considerations for Phase II structure.

#### **Additional Services not included are as follows:**

1. Civil, Floodway Engineering, Grading & Utility Design shall be provided by the Owner's Consultant.
2. Surveying, including Topo, Tree & Boundary with all site features shall be provided by the Owner's Consultant.
3. Special Floodway Design requirements by FEMA.
4. Phase II Design and Engineering.
5. Fire Protection & Fire Alarm System shall be Design-Build by Contractor.
6. Soils Testing shall be provided by the Owner's Consultant.
7. Interior Design of an intensive scope.
8. Special Equipment design & engineering including Active Solar System shall be provided by the Owner's Consultant or as a Design/Build package.
9. Special Inspections shall be provided by the Contractor.
10. Life cycle analysis: None anticipated.
11. LEED Certification, including LEED related application fees.
12. Building modeling and energy use/loss reports.

## **Exhibit 'B'**

### **§12.1 Clarification to Item 11.8 Compensation for Reimbursable Expenses:**

- .1** Transportation and authorized out-of-town travel and subsistence;  
**(NONE ANTICIPATED)**
- .2** Long distance services, dedicated data and communication services, teleconferences, Project Websites, and extranets;  
**(NONE ANTICIPATED)**
- .3** Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4** Printing, reproductions, plots, standard form documents;  
**(ESTIMATED AT \$1900.)**
- .5** Postage, handling and delivery;  
**(ESTIMATED AT \$150)**
- .6** Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;  
**(NONE ANTICIPATED)**
- .7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;  
**(NONE ANTICIPATED)**
- .8** Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's Consultants  
**(NONE ANTICIPATED)**
- .9** All taxes levied on professional services and on reimbursable expenses;
- .10** Site office expenses; and
- .11** Other similar Project-related expenditures.

## **Exhibit 'C'**

### **§12.2 \_\_\_ INDEMNIFICATION**

.1 To the fullest extent permitted by law, Architect shall defend, indemnify, and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expense, including but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omission or mistakes relating to the performance of the Contract Documents. Architect's duty to defend, indemnify and hold harmless Owner, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damages, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, caused by any negligent acts, errors, omission or mistakes Architect may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be constructed as limiting the scope of the indemnity in this paragraph.

#### **.2 Abrogation of Arizona Revised Statutes Section 34-226:**

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, Architect shall defend, indemnify and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from Architect's work or services. Architect's duty to defend, indemnify and hold harmless, Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of Architect, anyone Architect directly or indirectly employs or anyone for whose acts Architect may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including Owner.

.3 The scope of this indemnification does not extend to the sole negligence of Owner.

.4 Obligations under this Section 12.1- shall survive termination of this Agreement.

## §12.3 INSURANCE REQUIREMENTS

### .1 General Requirements

a. Architect, at Architect's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of *at least A*. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of Owner. The form of any insurance policies and forms must be acceptable to Owner.

b. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of Owner, constitute a material breach of this Contract.

c. Architect's insurance shall be primary insurance as respects Owner, and any insurance or self-insurance maintained by Owner shall not contribute to it.

d. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect Owner.

e. The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided by Owner under such policies. Architect shall be solely responsible for the deductible and/or self-insured retention and Owner, at its option, may require Architect to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

f. Owner reserves the right to review any or all of the herein required insurance policies and/or endorsements. Owner shall not be obligated, however, to review such policies and/or endorsements or to advise Architect of any deficiencies in such policies and endorsements, and such review shall not relieve Architect from, or be deemed a waiver of District's right to insist on strict fulfillment of Architect's obligations under this Contract.

g. The insurance policies required by this Contract, except Workers' Compensation and Professional Liability, shall name the Owner and its agents, representatives, officers, directors, officials and employees as Additional Insureds.

h. The policies required hereunder, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer of rights of recovery (subrogation) against the Owner and its agents, representatives, officers, directors, officials and employees for any claims arising out of Architect's work or service.

### .2 Commercial General Liability

a. Architect shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

b. The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

c. The CGL and the commercial umbrella coverage, if any, additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 10 01, and shall include coverage for Architect's operations and products.

## **Exhibit 'C' (P.3 of 3)**

### **.3 Automobile Liability**

Architect shall maintain Automobile Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Architect's vehicles (including owned, hired, non-owned), assigned to or used in the performance of this Contract. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damages shall apply.

### **.4 Workers' Compensation**

a. Architect shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Architect's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

b. Architect waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Architect pursuant to this agreement.

c. In case any work is subcontracted, Architect will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Architect.

### **.5 Professional Liability**

The Architect retained by the Owner to provide the work or service required by this Contract shall maintain Professional Liability insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the Architect, or any person employed by the Architect, with a limit of not less than \$1,000,000 each claim.

## **CERTIFICATES OF INSURANCE**

.1 Prior to commencing work or services under this Contract, Architect shall furnish Owner with Certificates of Insurance in a form acceptable to the Owner, or formal endorsements as required by the Contract. As evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect. Such certificates shall identify this contract number and title.

.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Architect's work or services and as evidenced by annual Certificates of Insurance.

.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to Owner fifteen (15) days prior to the expiration date.

## **CANCELLATION AND EXPIRATION NOTICE**

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to Owner.

## **§12.4 ADDITIONAL TERMINATION CLAUSE**

This Agreement is subject to termination under ARS Section 38-511.

W/GREEN

 **AIA**® Document B104™ – 2007

**Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope**

AGREEMENT made as of the Twenty Fifth day of August in the year Two Thousand Twelve  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*  
Town of Camp Verde, Bob Burnside, Mayor  
473 South Main St., Ste. 102  
Camp Verde, AZ 86322

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

and the Architect:  
*(Name, legal status, address and other information)*  
Joel Westervelt Architect  
93 Arnold Street  
Camp Verde, AZ 86322  
928.567.2255

for the following Project:  
*(Name, location and detailed description)*  
Camp Verde Community Library  
130 N. Black Bridge Loop Road, Camp Verde, AZ  
Approx. 10,000 s.f. new Library Facility.  
(GREEN TECHNOLOGY)

The Owner and Architect agree as follows.

Init.

## TABLE OF ARTICLES

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

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

*(State below 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, and other information relevant to the Project.)*

Building program is an approx. 10,000 s.f. new facility. Space will be occupied by Camp Verde Community Library.

Design scope will be based on conceptual plans prepared by Joel Westervelt Architect dated 15 April 2012.

It is to be noted that the interior layout will require additional modifications & Phase II will be approx. 12,000 s.f.

Site is about 2.5 acre located on Black Bridge Loop Road and Montezuma Castle Highway, Camp Verde, Arizona. Cost of the Work (construction) is approx. \$1,900,000. It is the Owner's intent to incorporate 'Green Construction' technology within the building & pursue LEED certified recognition.

Owner's consultants have not yet been determined. Architect's Anticipated Consultants are: 1. Structural Eng....John W. Thompson, PE. 2. Mechanical, Plumbing & Electrical Eng...Mike Willis, PE 3. LEED Consultant..... John Neville, LEED-AP

§ 1.2 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

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

### 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.

§ 3.1.1 The Architect shall be entitled to rely on (1) the accuracy and completeness of the information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.2 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. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 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 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and 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 Project requirements.

§ 3.2.3 The Architect shall consider the relative 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 schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

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

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

### § 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the 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 3.4.4.

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

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

§ 3.3.4 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.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

### § 3.4 Construction Phase Services

#### § 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 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.

§ 3.4.1.3 Subject to Section 4.2, 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.

#### § 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

#### § 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 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 3.4.2 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.

§ 3.4.3.2 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.

#### § 3.4.4 Submittals

§ 3.4.4.1 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, techniques, sequences or procedures.

§ 3.4.4.2 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.

§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

#### § 3.4.5 Changes in the Work

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 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### § 3.4.6 Project Completion

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.

### ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, value analysis, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

*(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)*

(See Attached Exhibit 'A')

§ 4.2 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 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services Twenty ( 20 ) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service.

§ 4.2.3 If the services covered by this Agreement have not been completed within Eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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 furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 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 require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 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.

§ 5.6 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.

§ 5.7 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.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, 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 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

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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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. 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 9.6.

### § 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 Mediation, 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. 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.

§ 8.2.3 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
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 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 the Agreement.

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

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

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

### § 8.3.4 Consolidation or Joinder

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

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

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

## 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 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.

#### 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 A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 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 or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

#### ARTICLE 11 COMPENSATION

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

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

Compensation shall be a stipulated sum of One Hundred Ninety Four Thousand Dollars (\$194,000).

§ 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.)*

Additional Services included in Section 4.1 shall be compensated as part of the fee enumerated in Section 11.1.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

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

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates enumerated below or fixed sum as negotiated.

Architect - \$140 / hr. Draftsman - \$75 / hr. Engineer (Structural, Mechanical, Plumbing or Electrical)-\$125/ hr.

LEED Consultant - \$75 / hr.

Construction Administration - \$65 / hr.

§ 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 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:

Design Development Phase:	\$77,600	percent ( 40%)
Construction Documents Phase:	\$87,300	percent ( 45%)
Construction Phase:	\$9700	percent ( 5%)
Initial Payment	\$19,400	(10%)
<b>Total</b>	<b>\$194,000</b>	<b>(100%)</b>
<b>Total Basic Compensation:</b>	<b>One hundred percent</b>	<b>(100%)</b>

§ 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.

§ 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.)*

Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates

Employee or Category	Rate
Architect	\$140/ hr.
Draftsman	\$75/ hr.
Engineer (Struct, Mech, Plumb, or Elect.)	\$125/ hr.
LEED Consultant	\$75/ hr.
Construction Administration	\$65/ hr.

§ 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;

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- .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 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and 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 plus Zero Percent percent ( 0 %) of the expenses incurred.

#### § 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:

Ten Percent (10%) of Compensation for Basic Services (Article 11.1) or Nineteen Thousand Four Hundred Dollars (\$19,400).

#### § 11.10 Payments to the Architect

##### § 11.10.1 An initial payment of

Nineteen Thousand Four Hundred Dollars

(\$ 19,400 ) 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 Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

18% per annum

§ 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 off set 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:

[See attached Exhibit 'B' (12.1) regarding Reimbursable Expenses clarification]

[See attached Exhibit 'C' regarding Indemnification (12.2), Insurance requirements (12.3) & Termination Clause (12.4)]

**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 incorporates the following documents listed below:

*(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

N/A

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

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

Bob Burnside, Mayor of the Town of Camp Verde

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

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

Joel Westervelt, Architect

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

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**Exhibit 'A'**

**Additional Services:**

**Additional Services included in this contract are as follows:**

1. Coordination of the Owner's Consultants
2. Landscape and Irrigation System Design
3. Comcheck energy calculations per the ICC: HVAC, plumbing, building envelope and electrical
4. Interface considerations for Phase II structure.
5. LEED 'Silver' Certification, including LEED related application fees.
6. Building modeling and energy use/loss reports.

**Additional Services not included are as follows:**

1. Civil, Floodway Engineering, Grading & Utility Design shall be provided by the Owner's Consultant.
2. Surveying, including Topo, Tree & Boundary with all site features shall be provided by the Owner's Consultant.
3. Special Floodway Design requirements by FEMA.
4. Phase II Design and Engineering.
5. Fire Protection & Fire Alarm System shall be Design-Build by Contractor.
6. Soils Testing shall be provided by the Owner's Consultant.
7. Interior Design of an intensive scope.
8. Special Equipment design & engineering including Active Solar System shall be provided by the Owner's Consultant or as a Design/Build package.
9. Special Inspections shall be provided by the Contractor.
10. Life cycle analysis: None anticipated.
11. LEED Certification beyond 'Silver' rating. I.e. 'Platinum'.

**Exhibit 'B'**

**§12.1 Clarification to Item 11.8 Compensation for Reimbursable Expenses:**

**.1** Transportation and authorized out-of-town travel and subsistence;  
**(NONE ANTICIPATED)**

**.2** Long distance services, dedicated data and communication services, teleconferences, Project Websites, and extranets;  
**(NONE ANTICIPATED)**

**.3** Fees paid for securing approval of authorities having jurisdiction over the Project;

**.4** Printing, reproductions, plots, standard form documents;  
**(ESTIMATED AT \$1900.)**

**.5** Postage, handling and delivery;  
**(ESTIMATED AT \$150)**

**.6** Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;  
**(NONE ANTICIPATED)**

**.7** Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;  
**(NONE ANTICIPATED)**

**.8** Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's Consultants  
**(NONE ANTICIPATED)**

**.9** All taxes levied on professional services and on reimbursable expenses;

**.10** Site office expenses; and

**.11** Other similar Project-related expenditures.

**Exhibit 'C'****§12.2 INDEMNIFICATION**

.1 To the fullest extent permitted by law, Architect shall defend, indemnify, and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expense, including but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omission or mistakes relating to the performance of the Contract Documents. Architect's duty to defend, indemnify and hold harmless Owner, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damages, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, caused by any negligent acts, errors, omission or mistakes Architect may be legally liable. The amount and type of insurance coverage requirements set forth herein will in no way be constructed as limiting the scope of the indemnity in this paragraph.

.2 Abrogation of Arizona Revised Statutes Section 34-226:

In the event that A.R.S. § 34-226 shall be repealed or held unconstitutional or otherwise invalid by a court of competent jurisdiction, then to the fullest extent permitted by law, Architect shall defend, indemnify and hold harmless Owner and its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of, or resulting from Architect's work or services. Architect's duty to defend, indemnify and hold harmless, Owner, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, injury to, impairment or destruction of property including loss of use resulting therefrom, caused in whole or in part by any act or omission of Architect, anyone Architect directly or indirectly employs or anyone for whose acts Architect may be liable, regardless of whether it is caused in part by a party indemnified hereunder, including Owner.

.3 The scope of this indemnification does not extend to the sole negligence of Owner.

.4 Obligations under this Section 12.1- shall survive termination of this Agreement.

**Exhibit 'C'** (P.2 of 3)**§12.3 INSURANCE REQUIREMENTS****.1 General Requirements**

a. Architect, at Architect's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of *at least A*. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of Owner. The form of any insurance policies and forms must be acceptable to Owner.

b. All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of Owner, constitute a material breach of this Contract.

c. Architect's insurance shall be primary insurance as respects Owner, and any insurance or self-insurance maintained by Owner shall not contribute to it.

d. Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect Owner.

e. The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided by Owner under such policies. Architect shall be solely responsible for the deductible and/or self-insured retention and Owner, at its option, may require Architect to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

f. Owner reserves the right to review any or all of the herein required insurance policies and/or endorsements. Owner shall not be obligated, however, to review such policies and/or endorsements or to advise Architect of any deficiencies in such policies and endorsements, and such review shall not relieve Architect from, or be deemed a waiver of District's right to insist on strict fulfillment of Architect's obligations under this Contract.

g. The insurance policies required by this Contract, except Workers' Compensation and Professional Liability, shall name the Owner and its agents, representatives, officers, directors, officials and employees as Additional Insureds.

h. The policies required hereunder, except Workers' Compensation and Professional Liability, shall contain a waiver of transfer of rights of recovery (subrogation) against the Owner and its agents, representatives, officers, directors, officials and employees for any claims arising out of Architect's work or service.

**.2 Commercial General Liability**

a. Architect shall maintain Commercial General Liability Insurance (CGL) and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

b. The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

c. The CGL and the commercial umbrella coverage, if any, additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 10 01, and shall include coverage for Architect's operations and products.

**Exhibit 'C' (P.3 of 3)****.3 Automobile Liability**

Architect shall maintain Automobile Liability Insurance and, if necessary, Commercial Umbrella Insurance with a combined single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Architect's vehicles (including owned, hired, non-owned), assigned to or used in the performance of this Contract. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damages shall apply.

**.4 Workers' Compensation**

a. Architect shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Architect's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

b. Architect waives all rights against Owner and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Architect pursuant to this agreement.

c. In case any work is subcontracted, Architect will require the Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Architect.

**.5 Professional Liability**

The Architect retained by the Owner to provide the work or service required by this Contract shall maintain Professional Liability insurance covering negligent acts, errors, or omissions arising out of the work or services performed by the Architect, or any person employed by the Architect, with a limit of not less than \$1,000,000 each claim.

**CERTIFICATES OF INSURANCE**

.1 Prior to commencing work or services under this Contract, Architect shall furnish Owner with Certificates of Insurance in a form acceptable to the Owner, or formal endorsements as required by the Contract. As evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect. Such certificates shall identify this contract number and title.

.2 In the event any insurance policy(ies) required by this contract is(are) written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Architect's work or services and as evidenced by annual Certificates of Insurance.

.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to Owner fifteen (15) days prior to the expiration date.

**CANCELLATION AND EXPIRATION NOTICE**

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to Owner.

**§12.4 ADDITIONAL TERMINATION CLAUSE**

This Agreement is subject to termination under ARS Section 38-511.



**Agenda Item Submission Form – Section I**

**Meeting Date:** September 19<sup>th</sup>, 2012

- Consent Agenda   
 Decision Agenda   
 Executive Session Requested  
 Presentation Only   
 Action/Presentation

**Requesting Department:** Town Manager

**Staff Resource/Contact Person:** Russ Martin

**Agenda Title (be exact):** Discussion, consideration, and possible approval of a Civil Engineering Services Contract with Shepard/Wesnitzer for services in preparation for construction of a new Town Library.

**List Attached Documents:**

1. S/W proposal
2. Civil Design & Engineering, Inc. proposal

**Estimated Presentation Time:** 5 minutes

**Estimated Discussion Time:** 10 minutes

**Reviews Completed by:**

**Department Head:** Russ Martin

**Town Attorney Comments:** We will be using our standard services contract.

**Finance Department – N/A**

**Fiscal Impact:** \$30,000 from the Library Building Fund

**Budget Code:** Library Building Fund **Amount Remaining:** \$795,000

**Comments:** This item is included in the FY 2012/2013 budget.

**Background Information:** Staff and Architect have requested from two firm's price proposals and have determined we would like to go forward with Shepard/Wesnitzer for civil engineer services that are separate from the services of the engineers for the building. Additional smaller service contracts may be necessary to submit permits or prepare proper structural drawings which are included in the \$30,000 estimate beyond Shepard's proposal.

**Recommended Action (Motion):** Move to approve standard contract for civil engineering services with Shepard Wesnitzer.



*Engineering an environment of excellence.*

## PROPOSAL / AGREEMENT FOR PROFESSIONAL SERVICES

**Ref. No. 12222**  
September 12, 2012

**BETWEEN:** Town of Camp Verde  
473 South Main Street, Suite 102  
Camp Verde, Arizona 86322 ("CLIENT")

**AND:** Shephard - Wesnitzer, Inc.  
1756 E. Villa Drive, Suite C-17  
Cottonwood, AZ 86326 ("SWI")

**FOR THE PROJECT:** Civil Engineering Services  
Public Library Facility ("PROJECT")  
Montezuma Castle Highway  
APN:'s 404-19-018B, 018C, 019 ("SITE")

The Client and SWI do hereby agree as follows:

### 1.0 DESCRIPTION OF PROJECT

Information provided by Client indicates that phase 1 of the Project will consist of a new 10,000 square feet, single story Library Facility located on the site of the existing Library on Moser Lane. Improvements proposed include the Library facility, realigned access from the highway, parking areas and utility services.

### 2.0 PURPOSE

The project purpose will be to provide planning and civil engineering design services related to the production of technical documents for approval from the Town of Camp Verde and the Yavapai County Flood Control District. Design work will be performed up to within 5 feet of the building structure.

Client's Initials \_\_\_\_\_

**3.0 SCOPE OF SERVICES**

We propose to provide the following:

Item No.	Description
1.	<p><b>Grading and Drainage Plans:</b>                      Prepare a preliminary and final set of design plans using a combination of design contours and spot elevations to define the proposed grades for the site including ADA routes. Plans will include site facilities related to sidewalks, parking, driveway access, pavement marking, fencing, The preliminary plan will be submitted for Town review comments. Final plans will be prepared upon receipt of all design comments from the Town and design team. Work effort is based on the preparation of up to two, 24" x 36" plan sheets. Grading plan work will be coordinated with the Floodway Study as required by the Flood Control District.</p>
2.	<p><b>On Site Drainage Report:</b>                      Prepare a Drainage Report for the Site per Town of Camp Verde requirements. Specifically, the report will address the existing and post development drainage conditions on the site. The analysis will provide a design of an on-site detention facility. Drainage plans will be prepared primarily showing existing and proposed conditions and drainage patterns. The boundary and topographic survey will be the base sheet for the design. Storm water first flush and recharge capabilities of the Site will be reviewed and incorporated if feasible.</p>
3.	<p><b>Floodway Study:</b>                      Using the latest hydraulic data of the Verde River from the Yavapai County Flood Control District, we will evaluate the existing hecras model and prepare a proposed conditions model with the planned improvements. The purpose of this study is to determine the feasibility of encroaching in the floodway without causing an increase in the base flood elevation ("NO-RISE"). We will evaluate "compensation" options necessary to account for the loss of conveyance due to the proposed obstructions. Assuming that the proposed improvements and "compensation" can be achieved without causing the base flood elevation to rise, we will then prepare a <u>Certification of a "NO-RISE" Determination</u> with the hydraulic models, a floodway report and supporting documentation to the Flood Control District. No additional cross section survey work is assumed to be required for the Verde River or Beaver Creek. Proposed Site conditions will be coordinated with the Grading Plans.</p>
4.	<p><b>Utility Site Plan:</b>                      Prepare a preliminary and final utility plan for water, sewer, gas, telephone and electric services from the existing site to the proposed buildings. Utility sizing and locations will be coordinated with the applicable utility companies. Specifications for the work will be incorporated into the plans.</p>

Work effort is based on the preparation of one site plan sheet with no plan and profile requirements. Coordination with the mechanical/fire/plumbing plans will be required.

**5. Site Survey (Optional):**

Locate and verify existing property corner monuments and boundary lines on the subject parcels (exterior corners only). In the event monuments are missing, new monuments will be set in compliance with the Arizona State Board of Technical Registration (BOTR) rules. Physical features along apparent property lines will also be located. Once field work is complete, a Results of Survey plat will be prepared showing the findings from the field work. The Results of Survey plat will be recorded at the County Recorder's office in compliance to the BOTR rules. Topographic information for the site including 4" DBH trees, driveway culvert inverts and sewer cleanouts will be shown. A minimum of two vertical and horizontal controls shall be established in the area of the project for plan set reference.

**4.0 SCHEDULE**

Work assumes that documentation requested from the Client is available within 2 days of request. Work will commence upon receipt of a signed copy of this agreement, and upon request a completed credit application. Site Survey is expected to require 2-3 weeks to complete. Weather conditions may impact the field survey work. Design work will commence until receipt of site survey information. Overall Project schedule will be determined by the Client.

**5.0 ASSUMPTIONS**

Sufficient boundary monumentation necessary for the establishment of the subject property boundary lines is assumed to exist within at least one adjoining tract. Sectional control is still existing and verifiable. No easement locations are included in this proposal. It is also assumed that no survey problems exist, such as erroneous monumentation, overlapping or defective deeds, or discrepancies between record title dimensions and actual field conditions or occupation. Client will be notified of any such circumstances along with an estimate of additional costs and time required for the resolution thereof. Digital and scaled site plan layout for the project shall be provided by the Client's architect. Work also assumes no cultural or historical resources will be encountered on the project site and no Federal permitting is assumed to be required for the project. Geotechnical investigations shall be provided by the Client and shall include technical recommendations for pavement, excavation, fill and other data required to prepare site work design drawings and specifications.

**6.0 MANNER OF PAYMENT**

Billing for work in progress will be made on a monthly basis. Payment is due upon receipt of monthly billings. Late fees at the rate of 2% interest per month on balance owed will be assessed to Client for delays in payments in excess of 30 days from the date of invoice. At 35 days past due, a 10 day written notification will be sent via certified mail indicating services will be halted due to delays in payments. If payment/s are not received upon a final notice of past due accounts, the account may be placed with an agency for collection. Client will be responsible for agency collection fees, court filing fees, court costs, and legal documents costs. Final revisions to calculations and drawings will be released upon receipt of final payment.

**7.0 FEES**

The cost for Scope of Services Items 1 through 4 will be performed for a lump sum fee of \$21,200.00 including reimbursable expenses. Reimbursable expenses include mileage, FedEx charges, drawing plots and plan reproduction. Scope of Services Item 5 may be included for an additional lump sum fee of \$3,400.00. Any additional work which may be indicated by the discovery of unanticipated conditions in the field or revisions to the site plans instigated by others will be performed, only upon your authorization, in accordance with our current Standard Rate Schedule. Current Standard Rate Schedule is subject to change as the current calendar year expires. The lump sum fee noted above is valid for 90 (ninety) calendar days after which time a review by SWI will be required.

**8.0 STANDARD SWI TERMS AND CONDITIONS**

Attached hereto and incorporated by the reference are the **SWI Standard Terms and Conditions**, which shall govern this agreement.

**9.0 SERVICES NOT INCLUDED**

Structural design, geotechnical investigations, off-site design, environmental studies, storm water pollution prevention plans, archeological studies, construction administration, traffic analysis, lighting plans, inspection, as-built records, construction staking or any other work not specifically identified in Section 3.0, Scope of Services. All agency and/or permitting fees are to be paid by the Client.



# TERMS AND CONDITIONS

Ref. No. 12222

The captions of the sections herein are intended for convenience of reference only and shall not be used to interpret the content of each section.

## 1. PROJECT INFORMATION

- 1.1 In preparation of its Proposal, SWI has relied on certain information and documentation supplied by CLIENT or CLIENT's agents as being accurate, and CLIENT agrees that SWI has a right to rely on the said information or documentation.
- 1.2 CLIENT affirms that CLIENT has provided all documents, maps and other information in CLIENT's possession, relating to past, present and proposed future use of THE SITE and its surrounding area, to SWI before execution of this Agreement by SWI.
- 1.3 CLIENT confirms that the content of all documents, maps and other information which CLIENT has provided to SWI before SWI's execution of this Agreement is correctly addressed in the Scope of Services part of this Agreement.
- 1.4 CLIENT will designate in writing those persons, organizations or agencies to be contacted in the event conditions are revealed during the execution of SWI's services that would require possible alteration of the services hereunder.

## 2. WARRANTY

SWI warrants their services are performed, within the limits prescribed by this Agreement, with the usual thoroughness and competence of the professions practicing these services in the same or similar locality of THE SITE at the time of this Agreement. No other warranty or representation, either expressed or implied, is included or intended under this Agreement.

## 3. SAFETY

SWI will perform work under safe conditions. CLIENT may be charged additionally for safety or security measures required by dangerous job conditions, encountered during SWI's performance of the required services that could not be anticipated by review of the information available at the time the Agreement was executed.

## 4. INSURANCE

- 4.1 SWI will maintain the following insurance and amounts: Workman's Compensation, statutory limits; General Liability, \$1,000,000; Professional Liability, \$1,000,000.
- 4.2 No insurance, of whatever kind or type which may be carried by SWI, is to be considered in any way limiting the responsibility of others for damages resulting from their operations or for furnishing work and materials ON THE SITE.

## 5. LIMITS OF LIABILITY

For any damage, cost, expenses, or other liability, direct or indirect, resulting from any error, omission, or professional negligence in the performance of SWI's services, the liability of SWI, its employees, agents, officers, and consultants to all claimants with respect to THE PROJECT will be limited to an aggregate sum not to exceed \$50,000 or SWI's total fee for the services rendered on THE PROJECT, whichever is greater.

## 6. NOTIFICATION OF DEFECTS IN SERVICE

CLIENT, CLIENT's personnel, and CLIENT's contractors and subcontractors shall promptly report in writing to SWI any defects or suspected defects in SWI's work or services, in order that SWI may take prompt, effective measures which in SWI's opinion will minimize the consequences of a defect in service.

## 7. INDEPENDENT CONTRACTOR STATUS

CLIENT confirms that SWI is employed as an independent contractor to perform the services required under this Agreement. SWI shall be free to exercise its discretion and independent

judgment as to the methods and means of performance of these services, consistent with all other requirements of this Agreement.

## 8. OWNERSHIP AND DISPOSITION OF DOCUMENTS

- 8.1 CLIENT agrees that all documents, calculations, studies, plans, maps, models, photographs, drawings, computer printouts, field notes, samples, logs, specimens, laboratory test data, and other products generated in the performance of services rendered under this agreement constitute work for hire and are and shall remain the property of the SWI.
- 8.2 SWI agrees that, during the performance of this Agreement, and thereafter it will not disclose to any persons, other than the CLIENT, CLIENT's authorized representatives, and those persons, organizations or agencies specifically designated in writing by CLIENT, any information pertaining to this Agreement or services rendered by SWI pursuant to this agreement except as follows:
  - 8.3 In response to a valid subpoena or requirement under the law; however, SWI shall notify CLIENT upon receipt of the subpoena or other mandate in order to give CLIENT time to protect the confidentiality of the materials sought; and
  - 8.2.2 Under circumstances where, in SWI's professional judgment, the performance of the duties under this agreement discloses a serious threat to the public health, safety of welfare, and the CLIENT after being notified of the threat refuses to, or does not take appropriate action within a reasonable time, then SWI has a professional obligation to notify the appropriate Regulatory Agency of the specific nature of the public threat.

## 9. DELIVERY OF ELECTRONIC FILES

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

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

The Client and the Consultant agree that any electronic files furnished by either party shall conform to the specifications listed in Exhibit A. Any changes to the electronic specifications by either the Client or the Consultant are subject to review and acceptance by the other party. If the Consultant is required to expend additional effort to incorporate changes to the electronic file specifications made by the Client, these efforts shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of seven (7) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic files shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and

## TERMS AND CONDITIONS

Ref. No. 12222

electronic files, the signed or sealed hard-copy construction documents shall govern.

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

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

### 10. ACTS OR OMISSIONS OF OTHERS

SWI shall not be responsible for acts or omissions of any other party or parties involved in planning or designing of any project(s) for construction on THE SITE or the failure of any contractor or subcontractor to construct any item on THE SITE in accordance with recommendations contained in any issued by SWI. SWI, by the performance of services hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to any project(s) on THE SITE customarily vested in project architects, design engineers, or any other design agencies or authorities.

### 11. RELIANCE ON PUBLIC RECORDS OR OTHER NON-SWI REPORTS AND DATA

Unless otherwise described in "SCOPE OF SERVICES", SWI accepts no responsibility for the correctness or accuracy of data or conclusions contained in public records, reports or other documents which were not published by SWI, but which are discovered by SWI in performance of the services required by this Agreement. CLIENT waives any claim against SWI, and agrees to defend, indemnify and hold SWI harmless from any claim or liability for injury or loss allegedly arising from errors, omissions or inaccuracies in such public records or in such other reports or documents.

### 12. SITE ENTRY

CLIENT will furnish right of entry onto THE SITE for SWI to make the necessary field studies.

### 13. MEDIATION

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between the parties to all those agreements.

### 14. LITIGATION BETWEEN AGREEMENT PARTIES

In the event of litigation or arbitration between the parties to this Agreement, all reasonable costs and attorney's fees to enforce this Agreement incurred by the prevailing party shall be reimbursed by the non-prevailing party.

SWI and its subcontractors shall comply with all existing applicable laws and regulations under this Agreement; however, laws or ordinances enacted after the signing of this Agreement may increase SWI's cost of performing services included in this Agreement by requiring modifications of or additions to SWI's work, facilities or equipment. CLIENT shall reimburse SWI for such increased cost.

### 15. SUBPOENAS

CLIENT is responsible, after notification, for payment of time and expenses resulting from SWI's required response to subpoenas issued in conjunction with SWI's work. Compensation will be based on schedules in effect at the time the subpoena is served.

### 16. COMPLIANCE WITH LAWS

SWI and its subcontractors shall comply with all existing applicable laws and regulations under this Agreement; however, laws or ordinances enacted after the signing of this Agreement might increase SWI's cost of performing services included in this Agreement by requiring modifications of or additions to SWI's work, facilities or equipment. CLIENT shall reimburse SWI for such increased cost in proportion to the amount of the cost attributable to SWI's performance of services on THE PROJECT.

### 17. INDEMNITY

CLIENT and SWI do hereby indemnify and hold each other harmless from damage to property of whatsoever kind and nature, and injury to persons, including death, occasioned by the negligent or willful acts, errors or omissions of the indemnifying party, arising out of, or in any way connected to this Agreement.

### 18. NOTIFICATION OF HAZARDOUS SUBSTANCES

CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous substances may exist at THE SITE, CLIENT has so informed SWI.

### 19. DISCOVERY OF UNANTICIPATED HAZARDOUS SUBSTANCES

SWI and CLIENT agree that the discovery of unanticipated hazardous substances constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. SWI agrees to notify CLIENT as soon as practically possible should unanticipated hazardous substances or suspected hazardous substances be encountered. SWI is hereby authorized to take such emergency measures, if any, that are necessary in SWI's professional opinion to immediately protect the health, safety and welfare of the public and SWI's personnel, and/or the environment and CLIENT agrees to compensate SWI for such emergency work. Thereafter, CLIENT and SWI will negotiate to change the scope of services hereunder to include said emergency work. In addition, CLIENT waives any claim against SWI, and agrees to indemnify, defend and hold SWI harmless from any claim or liability for injury or loss arising from SWI's encountering unanticipated hazardous substances or suspected hazardous substances. CLIENT also agrees to compensate SWI for any time spent and expenses incurred by SWI in defense of any such claim, with such compensation to be based upon SWI's prevailing fee schedule and expense reimbursement policy.

### 20. PAYMENT

CLIENT shall pay SWI in full for all services under the Agreement and executed written Change Orders, irrespective of any claim by CLIENT to third parties for compensation for additional work conducted by SWI. Any such claim shall in no respect delay payment of fees for services performed by SWI. Standard hourly rates are subject to change as current year expires.

### 21. TERMINATION

21.1 This Agreement may be terminated by either party giving not less than ten (10) days written notice to the other party specifying a substantial failure to perform in accordance with the terms of the Agreement through no fault of the terminating party, provided that

## TERMS AND CONDITIONS

Ref. No. 12222

- the terminating party is in full compliance with the Agreement at the time of the notice of termination.
- 21.2 Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice.
- 21.3 In the event of termination for any reason prior to completion of all reports contemplated by the Agreement, SWI reserves the right to complete such analyses and records as are necessary to place their files in order and, where considered necessary by them to protect their professional reputation, to complete a report on the services performed to date.
- 22. TERMINATION CHARGES**
- 22.1 If this Agreement is terminated and the termination is due to substantial failure of CLIENT to perform in accordance with the Agreement through no fault of SWI, CLIENT shall pay SWI for services performed to the termination date plus termination charges.
- 22.2 Termination charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs that are directly attributable to termination. At the option of SWI an additional termination charge, not to exceed thirty percent (30%) of all charges incurred up to the date of termination may be made to cover the cost of completing analyses, records and reports in accordance with 21.3 of these Terms and Conditions.
- 23. SUSPENSION OF SERVICES**
- 23.1 CLIENT may, upon ten (10) days written notice, suspend further performance by SWI at any time.
- 23.2 If CLIENT's payment of statements is delinquent, SWI may, upon ten (10) days written notice, suspend further performance until such payment is restored to a current basis.
- 23.3 At the option of SWI, suspension for any reason exceeding thirty (30) days shall make this Agreement subject to termination or renegotiation.
- 23.4 All suspensions shall extend this Agreement's completion date commensurately.
- 23.5 In the event of suspension of services for any reason prior to completion of all reports contemplated by the Agreement, SWI reserves the right to complete such analyses and records as are necessary to place their files in order and, where considered necessary by them to protect their professional reputation, to complete a report on the services performed to date.
- 24. SUSPENSION CHARGES**
- 24.1 If SWI's performance is suspended for any reason, CLIENT shall pay SWI for services performed to the suspension notice date plus suspension charges.
- 24.2 Suspension charges shall include personnel and equipment rescheduling and/or reassignment adjustments, all other related costs indirectly attributable to suspension, and charges for completing analyses, records and reports in accordance with 21.5 of these Terms and Conditions.
- 25. DELAYS**
- 25.1 Delays resulting from acts of God or from factors beyond the reasonable control of the parties, or from the action or inaction of CLIENT shall extend this Agreement completion date commensurately.
- 25.2 CLIENT shall pay SWI for services performed to the delay commencement date plus delay charges. Delay charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs indirectly attributable to such delays.
- 26. ASSIGNS**
- Neither CLIENT nor SWI may delegate, assign or transfer his duties or interest in this Agreement without the written consent of the other party.
- 27. BETTERMENT**
- If, due to SWI's error, any required item or component of the PROJECT is omitted from SWI's construction documents, SWI shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the PROJECT or otherwise adds value or betterment to the PROJECT. In no event shall SWI be responsible for any cost or expense that provides betterment, upgrade or enhancement of the PROJECT.
- 28. CONSTRUCTION OBSERVATION**
- 28.1 SWI shall visit the site at intervals appropriate to the stage of construction, or as otherwise agreed to in writing by the Client and SWI, in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow SWI, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents.
- Based on this general observation, SWI shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the Work.
- If the Client desires more extensive project observation or full-time project representation, the Client shall request that such services be provided by SWI as Additional Services in accordance with the terms of this Agreement.
- SWI shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected neither by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.
- SWI shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. SWI does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.
- 28.2 SWI shall not be responsible for as-built certifications requested by the CLIENT, regulatory agencies or other third parties unless SWI has conducted the as-built field surveys and has conducted adequate construction observation services to certify to the accuracy and quality of the construction.

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**SHEPHARD-WESNITZER, INC. - 2012 HOURLY RATES**

**STANDARD RATE SCHEDULE**

E-5	PRINCIPAL ENGINEER .....	\$185/HOUR
E-4	ENGINEER 4.....	\$155/HOUR
E-3	ENGINEER 3.....	\$145/HOUR
E-2	ENGINEER 2.....	\$130/HOUR
E-1	ENGINEER 1.....	\$115/HOUR
EIT-4	ENGINEER IN TRAINING.....	\$100/HOUR
EIT-3	ENGINEER IN TRAINING.....	\$90/HOUR
EIT-2	ENGINEER IN TRAINING.....	\$85/HOUR
EIT-1	ENGINEER IN TRAINING.....	\$80/HOUR
CADD-4	CADD DESIGNER .....	\$105/HOUR
CADD-3	CADD DESIGNER .....	\$95/HOUR
CADD-2	CADD DESIGNER .....	\$85/HOUR
CADD-1	CADD DESIGNER .....	\$75/HOUR
CAD-4	CAD DRAFTER.....	\$80/HOUR
CAD-3	CAD DRAFTER.....	\$70/HOUR
CAD-2	CAD DRAFTER.....	\$60/HOUR
CAD-1	CAD DRAFTER.....	\$50/HOUR
A-1	CLERICAL.....	\$55/HOUR
RLS	REGISTERED LAND SURVEYOR, SURVEY MANAGER.....	\$120/HOUR
RLSPC	REGISTERED LAND SURVEYOR, PARTY CHIEF .....	\$105/HOUR
LSIT	LAND SURVEYOR IN TRAINING, PARTY CHIEF.....	\$100/HOUR
NRL	NON-REGISTERED LAND SURVEYOR, PARTY CHIEF .....	\$80/HOUR
T-4	CONSTRUCTION INSPECTION TECHNICIAN .....	\$105/HOUR
T-3	PROJECT COORDINATOR.....	\$90/HOUR
	MARKETING DIRECTOR .....	\$75/HOUR
	GIS COORDINATOR .....	\$95/HOUR
	INSTRUMENT PERSON .....	\$80/HOUR
	GPS RECEIVER .....	\$30/HOUR PER RECEIVER
	ROBOTIC TOTAL STATION.....	\$25/HOUR
	ARCHIVE FILE RESEARCH.....	\$55/HOUR, 1 HOUR MINIMUM

**OUTSIDE SERVICES..... COST + 10%**

**PRINTS**

BOND .....	\$2.75EACH
VELLUMS .....	\$5.00EACH
MYLAR.....	\$6.00EACH

**PLOTS**

BOND .....	\$5.00EACH
VELLUM .....	\$10.00EACH
MYLAR .....	\$10.00EACH
COLOR PLOTS/BOND.....	\$15.00EACH
XEROX .....	\$.09EACH
CD'S .....	\$5.00EACH
MILEAGE.....	\$.65 PER MILE
FOR ANY AND ALL SERVICES RELATED TO LITIGATION OR OTHER LEGAL PROCEEDINGS	
TWO TIMES OUR STANDARD RATES	

WORK OUTSIDE NORMAL BUSINESS HOURS WILL BE CHARGED AT 1½ TIMES HOURLY RATE. PAYMENT IS DUE UPON RECEIPT OF MONTHLY BILLINGS AND INVOICES ARE DELINQUENT THIRTY (30) DAYS AFTER DATE OF INVOICE. WORK IN PROGRESS WILL BE BILLED MONTHLY FOR PORTIONS COMPLETED AND UPON JOB COMPLETION FOR FINAL BALANCE. IF PAYMENTS ARE NOT MADE IN FULL PRIOR TO DELINQUENCY, THE CLIENT AGREES TO PAY INTEREST ON THE UNPAID AMOUNT AT THE RATE OF 2% PER MONTH FROM DELINQUENCY DATE. ALL PAYMENTS RECEIVED SHALL FIRST BE CREDITED TO PAYMENT OF INTEREST, AND THEN TO THE PRINCIPAL BALANCE

**EXHIBIT A**  
**SHEPHARD-WESNITZER, INC.**  
**ELECTRONIC FILE SPECIFICATIONS**

FILE TYPE	FILE FORMAT
Text Document	Microsoft Office Word 2003
Spreadsheet	Microsoft Office Excel 2003
Database	Microsoft Office Access 2003
Project Scheduling	Microsoft Office Project 2003
Meeting Notification	Microsoft Office Outlook 2003
Presentations	Microsoft Office PowerPoint 2003
Drawing Files	AutoCad 2009 or Microstation V8i
Geographic Information Systems	ESRI ArcInfo or AutoCad Map 2009
Storm Drain Analysis	Bentley StormCAD
Water System Analysis	Bentley WaterCAD
Sewer System Analysis	Bentley SewerCAD
Culvert Analysis	Bentley CulvertMaster
Open Channel Analysis	Bentley FlowMaster
Pond Routing Analysis	Bentley PondPack

# Civil Design & Engineering, Inc.



• P.O. Box 30836 • Flagstaff, Arizona 86003-0836 • Telephone (928) 522-9287

## Proposal & Contract

Date: August 23, 2012  
Project: Camp Verde Library  
Client/Owner:  
Name: Town of Camp Verde

Contact Person: Joel Westervelt Architect  
Address: jwverde@hotmail.com  
Phone: (928)567-2255

**Project name/Location:** Camp Verde Library /130 Black Bridge Lp Road, Camp Verde, AZ 86322

### Scope of Work:

Based on the information provided, the project will consist of a split-level public library. Phase One will be approximately 10,000 square feet, and phase two will consist of approximately 12,000 square feet. Both buildings will be steel frame and masonry slab-on-grade structures. Approximately 600 linear feet of asphalt concrete paved parking and the associated sidewalk will be included. The project site is located in a floodway. The finished floor elevation shall be raised as required. The encroachment of the building foot print cannot exceed the area currently encroaching into the floodway. This has already been negotiated with Yavapai County Flood Control. The site is currently on septic, but sewer service is available.

- Grading & Drainage plans. Including ADA access.
- Flood Study along with recommendations for foundation design addressing scour depth and riprap protection requirements.
- Site Utility plan, to include water and sewer services as well as fire hydrant and fire sprinkler lines
- Control Sheet with x,y,z coordinates.
- Drainage Report

Optional cost to prepare Site Survey with Topo/Boundary/Tree/Building locations. Include adjacent Park property. - \$4,000.00  
Optional cost for Geotechnical Engineering Report (to be performed by Western Tech, see attached proposal) - \$6,980.00  
This proposal does not include costs for permits and review fees.

### Fee Arrangement:

Construction Documents – Hourly not to exceed. \$ 28,450.60

### Fee for additional Services:

See Standard Rate Schedule.

### Special Conditions:

- Civil Design & Engineering, Inc. terms and conditions are a part of this agreement.

### The following items are not included in this proposal for engineering services:

- Agency fees including review fees, buy-in fees, impact fees, etc.
- Construction staking
- As-built Plans
- Geotechnical testing (except as option)
- Survey (except as option)
- Discovery or mitigation of hazardous materials
- Architectural plans or elevations
- Lighting Plans

Offered by:

  
Christine Laguna, President

8-24-12  
Date

Accepted by:

Signature

Date



# Civil Design & Engineering, Inc.

• P.O. Box 30836 • Flagstaff, Arizona 86003-0836 •  
Telephone (928) 522-9287

## TERMS AND CONDITIONS

This Firm shall perform the services outlined in this agreement for the stated fee arrangement.

**ACCESS TO SITE:** The Firm will have access to the site for activities necessary for the performance of the services. The Firm will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage.

**DISPUTE RESOLUTION:** Any claims or disputes made during design, construction or post construction between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

**BILLINGS/PAYMENTS:** Invoices for the Firm's services shall be submitted, at the Firm's option, either upon completion of such services or on a monthly basis. Invoices shall be due on receipt. If the invoice is not paid within 30 days, the Firm may, without formal notice and without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Work may not resume immediately upon receipt of payment but as the Firm's schedule permits. Retainers shall be credited on the final invoice.

**LATE PAYMENTS:** Accounts unpaid 30 days after the invoice date will be subject to a monthly service charge of 1.5% on the then unpaid balance. In the event any portion or all of an account remains unpaid 60 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

**CERTIFICATIONS:** Guarantees and Warranties: The Firm shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain.

**LIMITATIONS OF LIABILITY:** In recognition of the relative risks, rewards and benefits of the project to both the Client and the Firm, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Firm's total liability to the client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any

causes, shall not exceed ten times the fee or \$50,000, whichever is less.

**TERMINATION OF SERVICES:** This agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and termination expenses.

In the event that this proposal is not signed, accepted and initiated within sixty days it becomes void.

**OWNERSHIP OF DOCUMENTS:** All documents produced by the Firm under this agreement shall remain the property of the Firm and may not be used by the Client for any other endeavor without consent of the Firm.

**CHANGED CONDITIONS:** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, or changed, to the extent that they affect the scope of services, compensation, schedule, allocation of risk or other material terms of the Agreement, the Consultant may call for renegotiations of appropriate portions of the Agreement. The Consultant shall notify the Client of the changed conditions necessitating renegotiations, and the Consultant and the Client shall promptly and in good faith enter into renegotiations of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

Accepted by:

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
printed name/title