AIA Document B141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

The name of this Agreement is:

Professional Design and Consulting Services for City Hall And Annex Exterior Envelope Renovations Project

AGREEMENT

made as of the 4th day of September in the year of
~~Nineteen Hundred and~~ two thousand ~~and~~ twelve (2012)

BETWEEN the Owner:
(Name and address)

City of Durham
101 City Hall Plaza
Durham, NC 27701

and the Architect:
(Name and address)

ROUGHTON NICKELSON DELUCA ARCHITECTS PA
3608 University Drive, Suite 204
Durham, NC 27707

☐ (Landscape Architect) If this box is checked, then in this Agreement, unless the context requires otherwise, the term "Architect" (with an initial capital "A") shall mean "Landscape Architect."

For the following Project:
(Name and location)

City Hall and City Hall Annex
101 City Hall Plaza
Durham, NC 27701

The Owner and Architect agree as set forth below.

Articles 1 through 10 of the AIA Document B141, 1987, 6/92 reprinting, are incorporated by reference, as amended by this document. If a copy of the printed B141 is attached, that is done so for convenience, and only Articles 1 through 10 of that attachment are intended to apply to this Agreement. This document amends the B141, whether or not a printed copy of the B141 is attached.

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

Add: "1.1.4 (Approvals) The Owner's approvals of documents and other items, e.g., in Subparagraphs 2.3.1, 2.4.1, and 2.5.1, are not waivers or releases of the Architect's duty to provide the documents and other items in accordance with this Agreement and in accordance with applicable professional standards."

Add: "1.1.5 (Standard of Care; Qualifications) Unless a higher standard otherwise applies, the Architect agrees that it will meet or exceed a national standard instead of the standard of care in the Durham community or similar communities. The Architect warrants the accuracy of Architect's representations made to Owner as to Architect's qualifications and experience during the process in which the Owner selected the Architect."

Add: "1.1.6 (G. S. Chapter 133) The Architect shall comply with applicable provisions of N. C. General Statutes Chapter 133, Article 1."

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 (Customary Services Included) Add to the end: "and all other design services that are normally or customarily furnished and reasonably necessary for the Project".

2.2 SCHEMATIC DESIGN PHASE

2.2.1 (Understanding of Requirements) Add to the end: "As part of this review, the Architect shall attend a series of meetings with the Owner's project team and the Architect's consultants."

2.2.3 (Containing Costs) Add to the end: "One purpose of the review is to contain costs within the budget limits."

2.2.4 (Project Budget to be Considered) In line 2, change "construction" to "Project".

2.2.5 (Estimate of Construction Cost) Add to the end: "The preliminary estimate of Construction Cost shall include, at a level of detail satisfactory to the Owner, estimates of Construction Cost, including the cost of each category of work involved."

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 (Design Development Documents) Delete and replace with: "Based on the approved Schematic Design Documents, and any adjustments as authorized by the Owner in writing in the program or Project budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, landscape architectural, civil engineering, structural, mechanical, environmental, interior designs, and electrical systems, and such other elements as may be appropriate."

Add: "2.3.3. (Advise on Tests) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner's arranging for the tests, inspections and reports referred to in Paragraph 4.7."

Add: "2.3.4 (Probable Construction Cost) The Architect shall submit to the Owner a preliminary estimate of Construction Cost based upon the design development documents and, if requested by the Owner, shall assist the Owner in securing at least one independent estimate of Construction Cost from qualified construction estimators. The services shall include providing detailed estimates of Construction Cost. This requirement may be moved to the end of

the Schematic Design Phase if in the opinion of the Architect and Owner enough information has been produced in that phase to generate a reliable budget projection."

Add: "2.3.5 (Review for Code Compliance) The Architect shall submit the Design Development Documents to the Development Review Board for its review for compliance with applicable code requirements before proceeding to the Construction Documents Phase. If appropriate, this requirement may likewise be moved to the end of Schematic Design Phase."

Add: "2.3.6 (Revise Documents) To the extent the Owner reasonably requests, the Architect shall revise the Design Development Documents to the extent that the revisions are not inconsistent with the program referred to in Subparagraph 2.2.4. To the extent of any conflict, this Subparagraph controls Subparagraphs 3.3.1 and 3.3.2."

2.3.7 (Existing Site Investigation and Drawings) See Subparagraph 3.4.6.

2.4 CONSTRUCTION DOCUMENTS PHASE

Add: "2.4.5. (Advise on Need for Information) To the extent appropriate during this phase, the Architect shall advise the Owner of the advisability of the Owner's arranging for the tests, inspections and reports referred to in Paragraph 4.7."

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 (Multiple Rounds of Bids) Add to the end: "The bidding may include two or more rounds of soliciting, receiving, and processing bids. The number of bids will be set in the Owner's discretion. As part of Basic Services, the Architect shall attend as many as two pre-bid conferences with prospective bidders. The services shall include modification of the drawings, specifications and other documents. To the extent required by law or requested by the Owner, the bidding may provide for multiprime and single prime bids."

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 (Termination of Construction Phase) In line 5, "date" is deleted and replaced by "issuance of a certificate".

2.6.2 (Administration) Delete "current as of the date of this Agreement". Substitute: "1987 edition, as modified by the Supplementary Conditions and modifications thereto as approved by the Owner, to the extent that said Conditions and modifications do not conflict with this Agreement".

2.6.3 (Changes in Duties of Architect) Delete the end of the first sentence beginning "with consent…". Add to the end: "Nothing in this Subparagraph limits the obligation of the Architect to perform as otherwise required pursuant to this Agreement, including Article 3."

2.6.5 (Site Visits; Timing of Visits) In the first sentence, delete "become generally familiar with" and replace with "determine". In Also in the first sentence, after "quantity of Work completed" insert: ", to determine in general if the Work is proceeding in accordance with the Contract Documents," and delete "in general" after "and to determine". In third sentence, after "the Architect shall keep the Owner informed" insert "in writing". Add to the end: "The Architect shall visit the Site at least once every other week, unless the Owner's representative agrees that fewer visits are appropriate."

2.6.9 (Consultation before Certifying Payment) In the first sentence, after, after "Contractor's Applications for Payment" insert "and after consultation with Owner".

2.6.12 (Submittals) In the first sentence, after "Shop Drawings, Product Drawings, and Samples," delete "but only for the limited" and replace with "for the", and at the end of the first sentence, insert ", and for the purpose of assuring that if the Work is performed as shown by the submittals, it will be in compliance with the Contract Documents". In the third sentence, delete "Review" and replace with: "Except to the extent otherwise provided in the first sentence of this Subparagraph, review". In the last sentence, after "to rely" insert "when reasonable". Add to the end: "The Architect shall determine what aspects of the Work shall be the subject of submittals, and shall not knowingly permit such aspects to proceed in the absence of approved submittals."

2.6.17 (Aesthetics) Add to the end "To the extent the Contract Documents do not permit the Owner to make final decisions on aesthetic matters, then this Subparagraph shall be deemed modified by requiring the Architect to consult the Owner before making a decision on matters relating to aesthetics effect. To the extent that the Contract Documents

permit the Owner to make final decisions on aesthetic matters, this Subparagraph shall be of no effect. This Subparagraph shall control over Subparagraph 4.2.13 in the General Conditions."

Add: "2.6.20 (As-builts) Upon completion of the Project or any earlier termination, whether under Article 8 or otherwise, the Architect shall revise all Drawings, Specifications, and other documents, and the Architect shall promptly furnish the Owner a complete set in reproducible form. The revisions shall describe fully (a) the finally constructed Work, if the Project is completed, or (b) the Work to the point of termination, if the Architect's services or this Agreement is terminated before completion of the Work."

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 (Authorization for Contingent Additional Services) In the first sentence, after "3.2", insert ", 3.3,". Delete everything beginning with the third sentence ("If services . . . those services."). Add to the end: "If a reasonable reading of this Agreement is that a service is to be provided as a Basic Service, the listing of that service or a similar service under Article 3 is not intended to limit the performance of that service as a Basic Service. Without limiting the Owner's other rights and remedies, it is agreed that Services that are needed because of the failure of the Architect to comply with this Agreement or its duties to the Owner shall be performed or provided by the Architect without charge."

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 (Revise Documents) Add to the end: "To the extent of any conflict, Subparagraph 2.3.6 controls Subparagraph 3.3.1."

3.3.1.2 (Preparation Date) After "documents" insert: "provided that the date of preparation must be after the date of this Agreement".

3.3.2 (Revise Documents) Add to the end: "To the extent of any conflict, Subparagraph 2.3.6 controls Subparagraph 3.3.2."

3.3.9 (Bid documents) Delete entirely.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.6 (Existing Site Investigation and Drawings) Add to the end: "However, if the Project involves renovation or repair of an existing improvement and such investigation or drawings are needed to perform the Basic Services properly, then the services described in the preceding sentence shall be part of the Basic Services."

3.4.10 (Estimates of Construction Costs) Delete entire sentence and replace with "See Subparagraph 2.3 4."

3.4.16 (Reproducibles) Delete entirely.

3.4.17 (Use of Systems) In the first sentence, after "Providing assistance" insert: "in excess of the hours specified as part of Basic Services in Paragraph 12.2".

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.5 (Site Information) In the first sentence, after "the Owner shall" insert "to the extent the Architect indicates it is required for the Project,".

4.7 (Duty to Furnish Tests) Add to the end: "but only after the Architect has advised the Owner what tests, inspections, and reports are required".

4.8 (Furnishing of Services by Owner) Add to the end: "However, without limiting any other provision of this Agreement, nothing herein is intended to require the Owner to provide such services to the Architect with respect to any matters (.1) that are subject to a dispute between the Owner and the Architect or (.2) to the extent the request or need for such services results from the fault, breach of contract, or negligence of the Architect."

4.9 (Reliance on Reports) Delete everything after "Owner's expense". Add to the end: "Upon the Architect's timely written request, which request shall be valid only if it specifically and prominently calls the Owner's attention to

Paragraph 4.9 as amended by this supplementary condition, the Owner shall add to the contracts for said services, information, surveys and reports that the Architect is a third-party beneficiary of said contracts. To the extent that the Owner fails to comply with the its obligations arising from the preceding sentence, the Architect shall be entitled to rely upon the accuracy and completeness of the service, information, survey, or report with respect to which the Owner thus failed to comply."

4.10 (Awareness of Nonconformities) In the first sentence, after "by the Owner to the Architect if" insert "the representative of". After "becomes" insert "actually".

Add "4.12 (Owner's Approvals) The Owner's approval of plans, specifications or other documents shall not relieve the Architect of the responsibility to provide professional services in compliance with this Agreement."

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 (Definition of Construction Cost) Delete "total cost or estimated cost" and replace with "latest preliminary estimate of Construction Cost that is approved by the Owner".

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 (Use of Documents) Delete entirely and substitute: "The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use with respect to this Project, and unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Architect may use them for other projects. The Owner shall be permitted to retain and make copies, including reproducible copies, of these documents, for information and reference in connection with the use, occupancy, and completion of the Project. The Owner may use them for other purposes including additions to and modifications of the Project and for other projects, provided that the Owner shall indemnify the Architect for losses, including reasonable attorneys' fees, suffered by the Architect as a result of the use of the design and these documents for such other purposes. If these documents are used for such other purposes, the Owner shall see that they are modified either (a) to indicate that the Architect did not prepare them for such other purposes and is not responsible for their use in connection with such other purposes or (b) to delete the Architect's name from the documents."

ARTICLE 7 ARBITRATION

Delete Article 7 entirely.

ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT

8.1 (Termination for Cause) In the first sentence, change "This agreement" to "This Agreement". Change "seven" to "ten". Add to the end: ", but this Paragraph shall apply only if the failure had a serious, adverse effect on the nonbreaching party's performance and the failure is not substantially cured before termination The notice shall summarize the grounds for termination."

8.2 (Suspension Payments) In the first sentence, after "If the " insert "services of the Architect or the". Add at the end: "In either case, the Architect shall not be entitled to other compensation."

8.3. (Termination and Suspension) Add to the first sentence after "written notice to the Architect": for convenience or". Add to the end: "The Owner may suspend the services of the Architect for convenience by sending a notice of suspension to the Architect. If such suspensions total more than 90 days for reasons beyond the Architect's control, the Architect may terminate the requirement that it provide services under this Agreement by giving the Owner 7 days notice."

8.4 (Nonpayment Notice and Cure) In first sentence, after "Owner to make payments" insert "that are not disputed". Add to the end "in accordance with Paragraph 8.1. In this Article, a payment is disputed if it is the subject of a good faith disagreement".

8.5 (Cure of Nonpayment) In the first sentence, after "Owner fails to make payment" and in line 4 after "payment in full", insert "of undisputed amounts". Add to the end: "The suspension shall cease when payment in full of undisputed amounts is made."

8.6 (Payments after Termination) Add at the end "but shall not be entitled to other compensation".

8.7 (Termination Expenses) Delete entire text and replace with "Any references to Termination Expenses elsewhere in the B141 shall be of no effect."

Add: "8.8 (Cooperation after Termination) If case of any termination, the Architect shall (a) cooperate with the Owner in completing the Project, (b) provide information requested by the Owner in connection with completion of the Project, (3) provide a reproducible copy of all Drawings, Specifications and other documents, even if incomplete, prepared by the Architect up to the date of termination, and (4) if requested by the Owner, provide a reproducible copy of all Drawings, Specifications and other documents to describe the constructed Work as of the date of termination. Services provided after termination shall be compensated as Contingent Additional Services."

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Delete and replace with: "(Place of Project; Choice of Law and Forum) This Agreement shall be deemed made in Durham County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This Paragraph shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this Paragraph."

9.2 (Definition of Project) Delete "current as of the date of this Agreement", and replace with "1987 edition, as modified by the Supplementary Conditions and modifications thereto as approved by the Owner, to the extent that said Conditions and modifications do not conflict with this Agreement. However, except to the extent the context otherwise requires, the 'Project' is described on page 1 of this Agreement."

9.3 (Statutes of Limitations) Delete entirely.

9.4 Add to the end: "Any reference to the A201 is to the 1987 edition, as modified by the Supplementary Conditions and modifications thereto as approved by the Owner."

9.8 (Reporting of Hazardous Material) Add to the end: "However, the Architect shall report to the Owner the presence and location of all hazardous material of which the Architect becomes aware."

Add: "9.10 (Architect's Licensing) The Architect represents that it is registered, licensed, and authorized to practice architecture in North Carolina, but if the box is checked indicating that the term "Architect" means "Landscape Architect," then the Architect represents that it is registered, licensed, and authorized to practice landscape architecture in North Carolina."

Add: "9.11 (Indemnification)

9.11.1 (Duty to Indemnify) To the maximum extent allowed by law, the Architect shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this Agreement as a result of negligent acts or omissions of the Architect. In performing its duties under this Subparagraph 9.11.1, the Architect shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

9.11.2 Definitions. As used in Subparagraphs 9.11.1 and 9.11.3 – "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are interest and reasonable attorneys' fees assessed as part of any such item). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, but excludes the Architect.

9.11.3 Limitations of the Architect's Obligation. Subparagraph 9.11.1 shall not require the Architect to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees."

Add: "9.12 (EEO Provisions, Equal Opportunity, M/WBE)

9.12.1 (EEO Provisions) For purposes of this Subparagraph 9.12.1, the Architect is "the Contractor." During the performance of this Contract the Contractor agrees as follows: (i) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (ii) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (iii) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (iv) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (v) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

9.12.2 (SDBE and Equal Opportunity) For purposes of this Subparagraph 9.12.2, the Architect is "the Contractor." The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Chapter 26 and not to the Contractor's alleged violations of other obligations. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS."

Add: "9.13 (Compensation for Architect's Errors) If the Architect creates plans or specifications containing an error that cause actual construction of a portion of Work that needs to be changed solely because of the Architect's error, the Architect will pay the Owner all costs of correcting the error, including an amount to compensate the Owner for time spent by Owner's employees because of the error without regard to what other services those employees might have done for the Owner had the error not occurred.

9.13.1 (Unforeseen Conditions) An error occurring because of physical conditions that were both not in fact known to the Architect or its consultants and not readily apparent to the Architect or its consultants shall not be grounds for payment under this Paragraph 9.13.

9.13.2 (Cost of Employees' Time) The cost of the employees' time will be calculated as follows: the time spent by any salaried employee of the Owner because of the error shall be compensated at an hourly rate equal to the employee's gross salary during the applicable fiscal year of the Owner divided by the number of hours worked by that employee for the Owner during that fiscal year.

9.13.3 (No Payment Below 1% or Above Deductible) The Architect shall not be required to make any payment under this Paragraph 9.13 until the total amounts that would be payable under the preceding sentences of this Paragraph exceed one percent (1%) of the latest preliminary estimate of Construction Cost, and the amount payable hereunder shall be only that amount that exceeds said 1%. The payments made under this Paragraph shall not exceed the insurance deductible of the Architect's professional liability insurance.

9.13.4 (Limits on Double Payments) If this Paragraph 9.13 is applied to compensate the Owner for an error (or if it is applied but the Architect has not paid anything pursuant to it because said 1% has not been exceeded), the Architect shall not owe the Owner any other compensation to remove the erroneously built

Work and replace it with correct Work. However, the payment of such compensation or the application of this Paragraph shall not affect liability for personal injury or damage to property. (In the preceding sentence, "damage to property" excludes the damage suffered by the Owner for the cost of replacing the erroneously installed Work for which this Paragraph provides compensation, but it includes all other general, special, consequential, or other kinds of damage resulting from the error.)

9.13.5 (Limit on Use of Payment against Architect) A payment by the Architect pursuant to this Paragraph 9.13 is not admissible against the Architect in any legal action or proceeding other than to enforce this Paragraph (e.g., it is not admissible in a personal injury action).

9.13.6 (Nonpayment Hereunder Not to Prevent Other Claims) If this Paragraph 9.13 is not applied so as to compensate the Owner for an error, this Paragraph shall not be used to construe this Agreement so as to reduce any remedy that is available to the Owner because of that error. For example, to the extent an error is not compensated for because of the amount exceeds the insurance deductible, the Owner will not be deemed to have waived a claim therefor."

Add: "9.14 (Waiver) The failure of either party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right, or remedy under this Agreement, shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue and remain in full force and effect. No waiver by either party of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party against whom the waiver is asserted."

Add: "9.15 (Headings) The headings to articles, Paragraphs, Subparagraphs, and Subsubparagraphs in this Agreement are included for reference only, and shall not be construed to affect the meaning of this Agreement."

Add "9.16 (Assignment of Subcontracts) All contracts between the Architect and others to provide services on the Project, in which the services are expected to take more than one month to complete and the compensation is expected to exceed $5,000, shall contain a provision allowing the Owner or a person designated by the Owner to assume the Architect's rights under the contract so as to require continued performance according to the terms of the contract, provided, however, that neither the Owner nor the person designated by the Owner shall be liable for breaches or other events or occurrences that took place before it assumed the contract. The Architect will demonstrate compliance with this Paragraph when requested by the Owner."

10.3.3 (Compensation after Time) At the end insert "or an amount calculated on the basis of an equitable adjustment, with consideration given to all relevant issues, including to what extent if any the services are more time consuming or expensive for the Architect to provide after said date than as originally planned, whichever is the lesser".

10.3.4 After the first word "When" insert "this Agreement specifies that".

10.5 PAYMENTS WITHHELD

10.5.1 (Disputed Payments) Insert at the end: ", provided, that while a payment is subject to a good faith dispute, the disputed portion may be withheld. The Owner shall endeavor to notify the Architect promptly of the nature of the dispute and the extent to which that payment is being withheld, but failure to do so shall not affect the parties' rights. Failure to withhold a payment does not constitute of a waiver of any of the Owner's claims or defenses with respect to the services for which that payment is made".

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 (GAAP and Maintenance of Records) Add to the end: "The records shall be kept in such form and detail as will clearly identify all relevant charges and costs and the bases thereof, except to the extent the Owner's representative and the Architect's representative concur otherwise in writing. Said concurrence is valid without an amendment to this Agreement. The Architect shall maintain all such records and provide the Owner access to them, and the right to copy them, until at least four years after Architect's last request for payment under this Agreement."

ARTICLE 11
BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of zero Dollars ($0.00) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows: *(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)*

The Owner shall pay, in accordance with Subparagraph 11.2.2, Basic Compensation in the amount of the following stipulated sum: Eight hundred and sixty-eight thousand seven hundred thirty-nine dollars ($868,739.00).

This amount includes Pre-Design and Basic Design Services totalling $669,289, as listed in Exhibit E - Architectural Fee Schedule and Hourly Rates. This amount also includes an allowance of optional additional services in an amount not-to-exceed $199,450 as outlined in Exhibit E - Architectural Fee Schedule and Hourly Rates. All services provided in the allowance of optional additional services must have written approval prior by the Owner. Payments will be made on a monthly basis in accordance with the percent complete of each phase of the project.

11.2.2 When compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable: *(Insert additional phases as appropriate.)*

See table in Exhibit E - "Architectural Fee Schedule and Hourly Rates".

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Representation beyond basic services shall be compensated in accordance with the hourly rates shown on Exhibit E.

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows: *(Insert basis of compensation, including rates and/or multiples of Direct Personnel Expenses for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)*

Additional services shall be billed on a not-to-exceed basis, in accordance with the hourly rates set forth in Exhibit E - "Architectural Fee Schedule and Hourly Rates".

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of ONE (1) times the amounts billed to the Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

Additional Services required of subconsultants shall be computed in accordance with Exhibit E

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ZERO (0) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within thirty (30) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 ~~Payments are due and payable ( ) days from the date of the Architect's invoice. Amounts unpaid ( ) 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.~~ Payments not subject to a good faith dispute are due and payable 45 days from the Owner's receipt of the Architect's invoice. The invoice is rebuttably presumed received on the first weekday that is not a legal holiday 3 days after mailing. The interest rate shall be eight percent (8 %) per year simple interest.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal place of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 ~~The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.~~

11.5.3.1 If Additional Services are authorized in accordance with this Agreement, the Architect shall provide Additional Services, with

compensation to be paid in accordance with Subparagraph 11.3.2. The rates for Additional Services, as set forth in or under Subparagraph 11.3.2,

☐ shall
☒ shall not

be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12
OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 (Representatives) The Owner's representative, authorized to act on the Owner's behalf, shall be: Doreen Sanfelici. The Architect's representative, authorized to act on the Architect's behalf, shall be: Charles Nickelson. Either party may substitute another representative by giving notice to the other party.

12.2 (Meetings; Use of Systems)

12.2.1 (Governing Body Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at one City Council meeting, one Council committee meeting, and one meeting of the Board of County Commissioners.

12.2.2 (DRB Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at two Development Review Board (DRB) meetings.

12.2.3 (Other Meetings) As part of Basic Services, the Architect shall attend and discuss the Project at meetings as follows: As part of Basic Services, the Architect shall attend and discuss the project at all meetings requested by the Owner.

☐ 12.2.4 (Use of Systems)

☐ The Architect shall provide as part of Basic Services a total of person-hours performing the services described in Subparagraph 3.4.17.

☐ Basic Services do not include the services described in Subparagraph 3.4.17.

12.3 (Liquidated Damages)

☐ This Paragraph 12.3 **applies** to this Agreement. The schedule referred to in this Paragraph 12.3 is contained in

☒ This Paragraph 12.3 **does not apply** to this Agreement. If this box is checked, then none of Paragraph 12.3 or its Subparagraphs is part of this Agreement.

This Paragraph 12.3, including its Subparagraphs, supersedes the original (i.e., as published by the AIA) version of Subparagraph 1.1.2 to the extent of any conflict. References to the schedule in this Paragraph are intended to refer to the schedule as amended from time to time with the consent of the Owner.

12.3.1 (Design Development Phase) If due solely to the fault of the Architect, the Design Development Phase is not completed by the schedule's deadline, the Owner shall withhold percent of the total compensation for that phase. If the Construction Documents Phase is completed by the schedule's deadline, the Owner shall release said withholding.

12.3.2 (Construction Documents Phase) If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule's deadline, the Owner shall retain the amount withheld pursuant to Subparagraph 12.3.1 as liquidated damages. If due solely to the fault of the Architect, the Construction Documents Phase is not completed by the schedule's deadline, the Owner shall retain as liquidated damages dollars ($) per day for each day after the deadline that the phase is incomplete for the first 7 days and dollars ($) per day for each day thereafter. If any part of those delays is caused in whole or in part by the Owner, liquidated damages shall not be charged for that portion of the delay time.

12.3.3 (Liquidated nature) The parties recognize that the Owner will suffer financial loss if the services of the Architect are not completed on schedule. They also recognize the delays, expense, and difficulty to both parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that the Architect shall be liable for the sums specified in this Paragraph 12.3 as liquidated damages, and not as penalties. The amounts stated as liquidated damages are agreed to be reasonable estimates of the Owner's losses and expenses for delays, including inspections, architectural and engineering services, and administrative costs.

12.4 (Notice) Unless the context otherwise requires, all notices and other communications required or permitted by this Agreement shall be in writing and shall be given either by personal delivery, fax, or by registered

or certified United States mail, return receipt requested, addressed as follows:

To the City:

Thomas J. Bonfield
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
The fax number is (919) 560.
and

Joel Reitzer, Director of General Services
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
The fax number is (919) 560.4970

To the Architect:

Name
Charles Nickelson, Principal
Roughton Nickelson DeLuca Architects PA
3608 University Drive, Suite 204
Durham, NC 27701

The fax number is (919)490-1396.

Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

12.5 (Reimbursable Expenses) In this Paragraph 12.5, "the Printed B141" refers to AIA Document B141, 1987, 6/92 reprinting.

☒ 12.5.1 Delete Paragraph 10.2 of the Printed A141 entirely including all Subparagraphs and Subsubparagraphs in

Paragraph 10.2. Any references to Reimbursable Expenses in this Agreement shall be of no effect, except as may be provided in Subparagraph 12.5.3.

☐ 12.5.2 In 10.2.1.1 of the Printed B141, delete "long-distance communications;" Delete these five Subparagraphs of the Printed B141: 10.2.1.2, 10.2.1.3, 10.2.1.4, 10.2.1.5, and 10.2.1.6.

☐ 12.5.3 .

12.6 (Certificates)

☒ 12.6.1 (Certificates) The Owner's representative and the Architect's representative have discussed Paragraph 4.11 of the B141.

☐ 12.6.2 (Certificates) The Owner's representative and the Architect's representative have not discussed Paragraph 4.11 of the B141 because:

12.7 (Other)

12.7.1

The following Exhibits are attached hereto and incorporated by reference herein:
Exhibit A - "Insurance Requirements", 1 page
Exhibit B - "Examples of Certificates", 5 pages
Exhibit C - "Scope of Work and Schedule of Deliverables", 8 pages
Exhibit D - "Project Design Procedures"
Exhibit E - "Architectural Fee Schedule and Hourly Rates", 2 pages

Where both this Agreement and an Exhibit impose similar tasks or duties on the Architect, the Architect shall perform the greater or most extensive of the tasks or duties.

12.7.2

In Subparagraph 2.3.4, delete "assist the Owner in securing" and substitute "secure" in the first sentence.

12.7.3

In Subparagraph 2.4.5, change "advisability of the Owner's" to "advisability of the Architect's".

12.7.4

Subparagraph 2.6.2 is rewritten to read:

2.6.2 (Administration) The Architect shall provide administration of the Contract for Construction as set forth below and in the owner-general contractor construction contract selected and used by the Owner for this Project. That construction contract will include the AIA Document A201, General Conditions of the Contract for Construction, 1987 or 1997 edition, as modified by the Supplementary Conditions and modifications thereto as

approved by the Owner, to the extent that said Conditions and modifications do not conflict with this Agreement, unless otherwise provided in this Agreement.

Paragraph 9.2 (Definition of Project) is modified to change “1987 edition” to read “1987 or 1997 (whichever is selected by the Owner) edition”

Paragraph 9.4 is modified to change “1987 edition” to read “1987 or 1997 (whichever is selected by the Owner) edition”

12.7.5
In Subparagraph 2.6.5, delete "once every other week" and add the word "weekly" in the the final sentence following "visit the Site at least".

12.7.6
Delete Subparagraph 3.4.4. from Optional Additional Services and add to Basic Services.

12.7.7
Delete Subparagraph 3.4.9.

12.7.8
In Paragraph 4.6, replace “Owner” with “Architect”; delete “when such services are requested by the Architect”; and delete paragraph 4.6 as revised from Owner’s Responsibilities and add to Basic Services.

12.7.9
In Subparagraph 4.11, add to the end of the subparagraph "Examples of certificates which may be required are in Exhibit B."

12.7.10
In Subparagraph 5.1.1, delete "preliminary" and add "design phase".

12.7.11
In Subparagraph 5.2.2, in the second sentence, add "with approval of the Owner" after "scope of the Project". Insert, before the last sentence of the Subparagraph, "The fixed limit of construction cost for phases identified in Exhibit C is Three million eight hundred and seventy-three thousand dollars ($3,873,000.00).
12.7.12
The project delivery method that the Owner anticipates will be used is design-bid-build utilizing a General Contractor.

12.7.13
In addition to providing the certificates in Exhibit B, it is agreed that the Architect shall provide the certificates (for payment, for completion, etc.) that are contemplated to be issued by the Architect under the contracts for construction between the City and the contractors that have contracts with the Owner for construction of the Project.

12.7.14
In subparagraph 11.3.3 delete "ONE (1) times the amounts billed to the Architect" and replace with "ONE AND ONE TENTH (1.1) times the amounts billed to the Architect".

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers

ATTEST: CITY OF DURHAM

_____ _____

PREAUDIT CERTIFICATE:

ROUGHTON NICKELSON DELUCA ARCHITECTS PA

By:_____

Title of officer: _____
(Affix corporate seal.)

[The following officers may sign for the corporation: chairperson; president; chief executive officer; vice-president; assistant vice-president; treasurer; or chief financial officer.]

State of _____ ACKNOWLEDGMENT BY CORPORATION

County of _____

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is (strike through the inapplicable:) chairperson/ president/ chief executive officer/ vice-president/ assistant vice-president/ treasurer/ chief financial officer of Roughton Nickelson DeLuca Architects PA, a

corporation, and that by authority duly given and as the act of the corporation, he or she signed the foregoing contract or agreement with the City of Durham and the corporate seal was affixed thereto. This the _____ day of _____, 20_____.

My commission expires: _____

_____

Notary Public