

AIA DOCUMENT B141

**AGREEMENT BETWEEN OWNER AND ARCHITECT
WITH STANDARE FORM OF ARCHITECT'S SERVICES**

This form is based on **AIA Document B141, *Standard Form of Agreement Between Owner and Architect with Standard Form of Architect's Services.***

AGREEMENT made as of the _____ day of _____ in the year 20_____.

BETWEEN the Owner:

Volkswagen Group of America Chattanooga Operations, LLC

and the Architect:

(Name, address and other information)

For the following Project:

(Include detailed description of Project)

MEB Battery Test Center

The Owner and Architect agree as follows.

ARTICLE 1.1 INITIAL INFORMATION

1.1.1 This Agreement is based on the following information and assumptions.
Refer to RFQ from Owner.

1.1.2 PROJECT PARAMETERS

1.1.2.1 The objective or use is:
Refer to RFQ from Owner.

1.1.2.2 The physical parameters are:
Refer to RFQ from Owner.

1.1.2.3 The Owner's Program is:
Refer to RFQ from Owner.

1.1.2.4 The legal parameters are:
Refer to RFQ from Owner.

1.1.2.5 The financial parameters are as follows.

- .1** Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:
- .2** Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:

1.1.2.6 The time parameters are:
(Identify, if appropriate, milestone dates, durations or fast track scheduling)

1.1.2.7 The proposed procurement or delivery method for the Project is:
Design, bid and negotiated proposals, build

1.1.2.8 Other parameters are:
(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)

1.1.3 PROJECT TEAM

1.1.3.1 The Owner's Designated Representative is:
(List name, address and other information.)

1.1.3.2 The Owner's other consultants and contractors are:
(List discipline and, if known, identify them by name and address.)

1.1.3.3 The Architect's Designated Representative is:
(List name, address and other information.)

1.1.3.4 The consultants retained at the Architect's expense are:
(List discipline and, if known, identify them by name and address.)

1.1.4 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 set forth on the vwsupplygroup.com web site, as edited.

1.1.5 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Paragraph **1.3.3**.

ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES

1.2.1 The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

1.2.2 OWNER

1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within **15** days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work.

1.2.2.3 The Owner's Designated Representative identified in Paragraph **1.1.3** shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

1.2.2.4 Unless otherwise provided in this Agreement, 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.

1.2.2.5 The Owner shall furnish any legal, insurance and accounting services, including auditing services, in Owner's sole discretion, solely to meet the Owner's needs and interests.

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

1.2.3 ARCHITECT

1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article **1.4**.

1.2.3.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Subparagraph **1.1.2.6** and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect.

1.2.3.3 The Architect's Designated Representative identified in Paragraph **1.1.3** shall be authorized to act on the Architect's behalf with respect to the Project.

1.2.3.4 The Architect shall maintain the confidentiality of the Instruments of Service, unless withholding such information would violate Applicable Law, or create the risk of significant harm to the public. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of the Instruments of Service.

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

1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services, and warrants that its services shall fully comply with all federal, state, and local laws, codes, ordinances, statutes, rules, regulations relating in any way to the Project ("Applicable Laws"). The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 1.3 TERMS AND CONDITIONS

1.3.1 COST OF THE WORK

1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

1.3.2 INSTRUMENTS OF SERVICE

1.3.2.1 Drawings, specifications and other documents, including, those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. Owner shall own and retain all rights in and to all Instruments of Service including without limitation all intellectual property rights.

1.3.2.2 Architect warrants and represents that it shall not, without prior written consent of Owner, communicate or disclose to any person or entity any information in connection with the Work or the Project, except (.1) information in the public domain prior to the date of the Contract, (.2) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of Architect, or (.3) as may be required to the perform the Work or by any Applicable Laws.

1.3.2.3 To the extent the Instruments of Service are deemed to be a work made for hire for Owner, Owner shall be the sole and exclusive owner of the Instruments of Service. To the extent such Instruments of Service are not a work made for hire, Architect hereby irrevocably assigns to Owner, its successors and assigns, all right, title and interest in and to all such Instruments of Service immediately upon creation thereof, and agrees to take such actions and execute such documents as Owner may reasonably request to effectuate such ownership and to secure, protect and perfect Owner's rights hereunder. Architect hereby irrevocably appoints and designates Owner and its agents as Architect's agents and attorneys-in-fact to act for and on Architect's behalf and instead of Architect to execute such documents and to take such actions as Owner believes are necessary to accomplish and effectuate the assignment and to secure, protect and perfect Owner's rights hereunder. Architect hereby irrevocably and unconditionally waives the benefit of any law, doctrine or principle known as "droit moral" or "moral rights of authors" or any similar law, doctrine or principle however denominated.

1.3.2.4 The Owner may in its sole discretion authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by commercially reasonable license. 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 Owner. The Owner will not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants.

1.3.2.5 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

1.3.3 CHANGE IN SERVICES

1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing any such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt

written notice to the Architect, and the Architect shall have no obligation to provide those services.

1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .4 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .5 change in the information contained in Article 1.1.

1.3.4 INFORMAL MEETING AND MEDIATION

1.3.4.1 The parties shall first endeavor to resolve any claim, dispute or other matter in question arising out of or related to this Agreement ("Claims") through discussions between both parties' respective field representatives and/or the parties' managers, supervisors, or other designated executives. If such discussions do not resolve the Claims, unless the parties agree otherwise, the parties shall submit the Claims to mediation as provided herein. 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 Laws to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them (which have not been resolved by information discussions) by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation, unless stayed for a longer period by agreement of the parties or court order.

1.3.4.3 The parties shall share the mediator's fee and any filing fees equally, unless otherwise agreed at mediation. 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.

1.3.5 ARBITRATION

1.3.5.1 Claims, disputes and other matters in question between the parties that are not resolved by informal discussions and/or mediation shall be submitted to binding arbitration.

1.3.5.2 Unless the parties mutually agree otherwise, such arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association, and such arbitration shall be governed by the Federal Arbitration Act and the Tennessee Uniform Arbitration Act, as applicable ("Arbitration Acts").

1.3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitation or repose.

1.3.5.4 Notwithstanding any other provision herein to the contrary, either party may apply to a court for interlocutory equitable or extraordinary relief. The Arbitrator(s) (as defined below) shall have the authority to modify any court order granting such interlocutory relief and such court order shall remain in full force and effect until so modified. Any such court or Arbitrator(s)' order may be enforced in any court having jurisdiction thereof. Any court relief sought under this Section shall be brought in and subject to the exclusive venue and jurisdiction of the courts of Hamilton County, Tennessee or the U.S. District Court for the Eastern District of Tennessee, as applicable.

1.3.5.5 Unless the parties otherwise agree in writing, the Arbitrator(s) shall be selected by the parties in accordance with the AAA Rules from the AAA National Construction Panel, and (whether a single arbitrator or a panel of three (3) arbitrators) shall be practicing attorneys who have experience with respect to large construction projects. If the procedures of the AAA Rules do not result in the selection of an Arbitrator or Arbitrators, then the parties shall request another list of arbitrators from the AAA in order to select mutually agreeable Arbitrator(s).

1.3.5.6 Fees and expenses in connection with the arbitration, including without limitation reasonable attorneys' fees and dispute resolution costs, in addition to any other damages or other amounts to which it may be entitled, shall be awarded to the prevailing party. The failure by one party to pay its share of arbitration fees and expenses in accordance with the AAA Rules shall constitute a waiver of such party's Claim or defense in the arbitration.

1.3.5.7 All arbitration proceedings and other information and matters relating to the arbitration shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction; provided that any such disclosure shall be to the most limited extent possible to accomplish such enforcement of the award and either party may seek a protective order in connection therewith. The parties agree to maintain such confidentiality.

1.3.5.8 Either party may include by joinder individuals or entities in accordance with the AAA Rules.

1.3.5.9 The award rendered by the Arbitrator(s) shall be a written, reasoned award stating the bases of the award, shall be final, and judgment may be entered upon it in accordance with Applicable Laws in any court having jurisdiction thereof.

1.3.5.10 OWNER AND ARCHITECT ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF OWNER AND ARCHITECT, AFTER CONSULTING (OR HAVING THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THE INSTRUMENTS OF SERVICE OR THE CONTRACT DOCUMENTS.

1.3.6 MISCELLANEOUS PROVISIONS

1.3.6.1 This Agreement shall be governed by the law of Tennessee.

1.3.6.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201 set forth on the vwsupplygroup.com web site, as edited.

1.3.6.3 To the extent damages are covered by property insurance during construction, the Owner and the 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 the edition of AIA Document A201 set forth on the vwsupplygroup.com web site, as edited. 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.

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

1.3.6.5 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

1.3.6.6 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 4 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

1.3.6.7 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 an affiliated entity of Owner. The Architect shall execute all consents reasonably required to facilitate such assignment.

1.3.7 TERMINATION OR SUSPENSION

1.3.7.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered 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, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner as a direct result 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.

1.3.7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated (by equitable adjustment) for expenses incurred in the interruption and resumption of the Architect's services.

1.3.7.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

1.3.7.4 This Agreement may be terminated by either party 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.

1.3.7.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

1.3.7.6 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.

1.3.8 PAYMENTS TO THE ARCHITECT

1.3.8.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

1.3.8.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1** transportation in connection with the Project, solely for authorized out-of-town travel and subsistence;

- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 renderings, models and mock-ups requested by the Owner;
- .5 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; and
- .6 reimbursable expenses as designated in Paragraph 1.5.3.

1.3.8.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

1.3.8.4 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.4.1 Enumeration of Parts of the Agreement. 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. This Agreement comprises the documents listed below.

1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA Document B141-1997.

1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B141-1997, or as follows:

(List other documents, if any, delineating Architect's scope of services.)

1.4.1.3 Other documents as follows:

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

1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

ARTICLE 1.5 COMPENSATION

1.5.1 For the Architect's services as described under Article **1.4**, compensation shall be computed as follows:

1.5.2 If the services of the Architect are changed as described in Subparagraph **1.3.3.1**, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Paragraph **1.5.2**, in an equitable manner.

1.5.3 Other Reimbursable Expenses, if any, are as follows:

1.5.4 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

1.5.5 An initial payment of _____ Dollars (\$_____) 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 at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

1.5.6 Payments are due and payable Sixty (60) days from the date of the Architect's invoice. Amounts unpaid Ninety (90) days after the invoice date shall bear interest at the United

States federal funds effective rate.

1.5.7 If the services covered by this Agreement have not been completed within _____ (_____) 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 Paragraph **1.5.2**.

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

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

(Printed name and title)

OWNER *(Signature)*

(Printed name and title)

ARCHITECT *(Signature)*

(Printed name and title)

**STANDARD FORM OF ARCHITECT'S SERVICES:
DESIGN AND CONTRACT ADMINISTRATION**

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- 2.9 MODIFICATIONS**

ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES

2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.

2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

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

2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

2.1.7.1 When the Project requirements have been sufficiently identified, the Architect shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of the Construction Documents, the Architect shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget.

2.1.7.2 Evaluations of the Owner's budget for the Project, 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 familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid

prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

2.1.7.3 In preparing estimates of the Cost of the 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 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.

2.1.7.4 If bidding or negotiation has not commenced within **90** days after the Architect submits the Construction Documents to the Owner, the Architect may adjust the budget for the Cost of the Work to reflect changes in the general level of prices in the construction industry.

2.1.7.5 If the budget for the Cost of the Work 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 Subparagraph 1.3.8.5; or
- .4** cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

2.1.7.6 If the Owner chooses to proceed under Clause **2.1.7.5.4**, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work.

ARTICLE 2.2 SUPPORTING SERVICES

2.2.1 The Owner shall furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

2.2.2 The Architect shall engage a surveyor to furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include any information needed by Architect, including without limitation grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.2.3 The Owner shall make available to Architect reports of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations. Such reports and related information are provided to the Architect for information only. Owner makes no representation or warranty as to the accuracy or completeness of such reports and related information. The Architect shall be solely responsible to analyze and interpret such reports and related information in performing its design services as set forth herein. Notwithstanding the foregoing, Architect shall not be liable for any subsurface conditions provided (i) Architect has no knowledge of such conditions as of the date of the Contract, and (ii) such conditions were not identified in the subsurface documentation, as applicable.

ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

ARTICLE 2.4 DESIGN SERVICES

2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services, all performed by persons or entities properly licensed as required by Applicable Laws.

2.4.2 SCHEMATIC DESIGN DOCUMENTS

The Architect shall provide Schematic Design Documents based on the mutually agreed upon program schedule and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing

2.4.3 DESIGN DEVELOPMENT DOCUMENTS

The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the

Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

2.4.4 CONSTRUCTION DOCUMENTS

2.4.4.1 The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

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

ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

2.5.1 The Architect shall assist the Owner in obtaining either competitive bids or negotiated proposals and shall assist the Owner in awarding and preparing contracts for construction.

2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

2.5.3 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Owner, the Architect shall notify all prospective bidders or contractors of the bid or proposal results.

2.5.4 COMPETITIVE BIDDING

2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.4.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.4.3 If requested by the Owner, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

2.5.4.4 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

2.5.4.5 The Architect shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

2.5.4.6 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

2.5.4.7 The Architect shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. The Architect shall subsequently document and distribute the bidding results, as directed by the Owner.

2.5.5 NEGOTIATED PROPOSALS

2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.5.2 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.

2.5.5.3 If requested by the Owner, the Architect shall organize and participate in selection interviews with prospective contractors.

2.5.5.4 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.

2.5.5.5 If requested by the Owner, the Architect shall assist the Owner during negotiations with prospective contractors. The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.

ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

2.6.1 GENERAL ADMINISTRATION

2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201 set forth on the vwsupplygroup.com web site, as edited.

2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment.

2.6.1.3 The Architect shall be a representative of and shall advise and consult with the owner during the provision of the Contract Administration Services. The Architect shall have

authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.1.4 Duties, responsibilities and limitations of authority of the Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

2.6.1.6 If requested by the Owner, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

2.6.1.7 If requested by the Owner, the Architect shall interpret and decide matters concerning performance of the Contractor under, and requirements of, 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.

2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial 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 the results of interpretations or decisions so rendered in good faith.

2.6.2 EVALUATIONS OF THE WORK

2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.

However, the Architect shall not 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, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

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

2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment 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 Paragraph 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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

2.6.3.3 The Architect shall maintain a record of the Contractor's Applications for Payment.

2.6.4 SUBMITTALS

2.6.4.1 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. 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. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

2.6.5 CHANGES IN THE WORK

2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.5.2 The Architect shall review properly prepared, timely requests by the owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may

issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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

2.6.6 PROJECT COMPLETION

2.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall 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 shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

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

2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

ARTICLE 2.7 FACILITY OPERATION SERVICES

2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

2.7.2 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

2.7.3 The Architect shall furnish or provide the following services only if specifically designated:

Services	Responsibility <i>(Architect, Owner or Not Provided)</i>	Location of Service Description
.1 Programming	Owner	
.2 Land Survey Services	Architect	2.2.2
.3 Geotechnical Services	Owner	2.2.3
.4 Space Schematics/Flow Diagrams	Architect	
.5 Existing Facilities Surveys	Architect	2.2.2
.6 Economic Feasibility Studies	N/A	
.7 Site Analysis and Selection	N/A	
.8 Environmental Studies and Reports	N/A	
.9 Owner-Supplied Data Coordination	N/A	
.10 Schedule Development and Monitoring	Architect	
.11 Civil Design	Architect	
.12 Landscape Design	Architect	
.13 Interior Design	Architect	
.14 Special Bidding or Negotiation	N/A	
.15 Value Analysis	N/A	
.16 Detailed Cost Estimating	N/A	
.17 On-Site Project Representation	N/A	
.18 Construction Management	N/A	
.19 Start-Up Assistance	Architect	
.20 Record Drawings	Architect	
.21 Post-Contract Evaluation	N/A	
.22 Tenant-Related Services	N/A	
.23		
.24		

2.7.4 Description of Services.

(Insert descriptions of the services designated.)

ARTICLE 2.8 MODIFICATIONS

2.8.1 Modifications to this Standard Form of Architect’s Services: Design and Contract Administration, if any, are as follows:

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date:

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)