AGREEMENT made as of __________ day of __________ in the year __________

BETWEEN the Architect’s client identified as the Owner:

Fairport Public Library
1 Village Landing
Fairport, NY 14450

and the Architect:

SWBR Architecture, Engineering and Landscape Architecture, P.C. d/b/a SWBR Architects

387 East Main Street
Rochester, NY 14604-2107

for the following Project:

Renovation of the Fairport Public Library located at 1 Village Landing, Fairport, NY 14450, as a public project subject to typical public bidding and prevailing wage requirements.

The Owner and Architect agree as follows.
TABLE OF ARTICLES

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

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

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

A preliminary Project schedule and budget are included as part of Exhibit A. Architect has performed services related to the Project pursuant to a Proposal for Professional Services dated February 27, 2013 and an Agreement for Professional Services dated September 17, 2013. The deliverables generated from such services shall also be incorporated herein as Initial Information, including without limitation the Program Document attached hereto as part of Exhibit A.

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

.1 Commencement of construction date:

| See preliminary schedule attached hereto as part of Exhibit A. |

.2 Substantial Completion date:

| See preliminary schedule attached hereto as part of Exhibit A. |
§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect’s services and the Architect’s compensation.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES
§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services under this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances, circumstances and who have experience in designing comparable library facilities, and in accordance with applicable professional practices, standards and codes (the “Standard of Care”). The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Project, and in accordance with the Project Schedule agreed upon between Owner and Architect.

§ 2.3 Within five (5) days after execution of this Agreement, the Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project, which individual shall be Architect’s prime contact with Owner.

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost: Agreement and for a period of three (3) years thereafter.

§ 2.5.1 Comprehensive General Liability Insurance (broad form, including contractual liability) with policy limits of not less than one million dollars ($1,000,000) combined single limit for each occurrence for bodily injury and property damage.

§ 2.5.2 Comprehensive Automobile Liability covering owned, non-owned and rented vehicles operated by the Architect in performance of the Agreement with policy limits of not less than one million dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

§ 2.5.3 Umbrella or excess liability insurance with policy limits not less than five million dollars ($5,000,000), provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.5.4 Workers’ Compensation at statutory limits and Employers Liability with a policy limit of not less than five hundred thousand dollars ($500,000).

§ 2.5.5 Professional Liability covering the Architect’s negligent acts, errors and omissions in its performance of professional services, written on an occurrence basis and with policy limits of not less than two million dollars ($2,000,000) per claim and two million dollars ($2,000,000) in the aggregate.

§ 2.5.6 Before this Agreement shall have any effect, the Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies, and will indicate that the insurance policies (including the Professional Liability policy) may not be cancelled, terminated or materially modified unless Owner has received at least thirty (30) days prior written notice. The maintenance in full current force and effect of such forms of insurance in accordance with Section 2.5 shall be a condition precedent to Architect’s exercise or enforcement of any rights under this Agreement.

§ 2.5.7 Architect shall ensure that any and all consultants engaged or employed by it shall carry and maintain similar insurance with reasonably prudent limits and coverages in light of the services to be rendered by such consultant.
§ 2.5.8 The Architect represents to the Owner as follows:

.4 Professional Liability § 2.5.8.1 The Services and Architect’s performance under this Agreement shall be of a good and workmanlike manner, and in material compliance with all applicable federal, state and local laws, codes, ordinances and regulations and the rules and regulations of all applicable governmental authorities having jurisdiction over all or part of the Services, the Architect, or the Project in effect as of the date of submission to building authorities. The Architect acknowledges that the Owner is relying upon the accuracy, competence and completeness of the Architect in performing the Services.

§ 2.5.8.2 The Architect is and will continue to be fully experienced and properly qualified, licensed, organized and equipped to perform the Basic Services and its obligations under this Agreement. The Architect shall have the status of and act as an independent contractor maintaining complete control over its employees, agents and representatives. The Architect is licensed in the State of New York and will employ on this Project architects and engineers who are licensed in the State of New York.

§ 2.5.9 The Architect shall attend all planning, job coordination and other project meetings as reasonably requested by Owner, including without limitation all such meetings as may be scheduled or conducted by the Owner’s contractors (it being recognized that Owner is required to hire multiple prime contractors for the Project) or Owner’s construction manager (“Construction Manager”), provided that Architect shall have no obligation hereunder to attend meetings of which it has not been provided at least 24 hours’ notice, except in the case of an emergency which does not allow for advance notice. In addition, Architect shall take detailed minutes of all meetings Architect attends prior to the Construction Phase. Architect shall distribute all such meeting minutes to attendees, appropriate absentee members of the Project Team, Owner, and Owner’s contractors, and insure receipt thereof within five (5) days after such meeting, and shall promptly distribute corrected minutes in the event comments are received. Architect shall not be responsible for taking and distributing meeting minutes during the Construction Phase. Notwithstanding the above, Architect’s visits to the site during construction, including regularly scheduled project meetings, in excess of the total visits stated in subsection 4.3.3, shall be provided as an Additional Service in accordance with Article 4 hereof.

ARTICLE 3 SCOPE OF ARCHITECT’S BASIC SERVICES

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

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. Owner, Owner’s consultants, Owner’s contractors and Owner’s designated representatives. The Owner’s Construction Manager shall be the Architect’s prime contact for Owner, and will designate other appropriate representatives of the Owner. All correspondence or other documents or materials shall be directed to the Construction Manager except as he or she may authorize. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner’s consultants, consultants but only to the extent doing so is reasonable if acting in accordance with the Standard of Care. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner’s approval a schedule for the performance of the Architect’s services. The schedule initially shall include services is attached hereto as part of Exhibit A. The schedule includes anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include Information, and allowances for periods of time required for the Owner’s review, for the performance of the Owner’s consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner’s approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.
§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution made without the Architect’s approval.

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

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project in the preparation and completion of all documents and submittals required by federal, state and local laws, codes, orders and regulations and by all governmental authorities with jurisdiction over the Project. The Architect shall prepare and submit to the Owner a written code review together with such supplemental drawings as may be required.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES
§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect’s services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner’s program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. In connection with the budget for the Cost of the Work, this evaluation shall consider both local historical data and all special conditions which may tend to distort historical averages. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

§ 3.2.5 Based on the Owner’s approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner’s approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

§ 3.2.6 The Architect shall submit to the Owner an review any estimate of the Cost of the Work prepared in accordance with Section 6.3, by Construction Manager and shall promptly provide to Construction Manager Architect’s comments thereon.

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

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES
§ 3.3.1 The Design Development Phase shall not commence until the Owner has issued a Notice to Proceed for this phase to the Architect. Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s
authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall review and promptly comment upon any update to the estimate of the Cost of the Work issued by the Construction Manager.

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

§ 3.3.4 The Architect shall prepare system selection analyses for all major system and equipment decisions, including, without limitation, HVAC and system selections, electrical distribution alternatives, fire detection systems, HVAC control systems, and finish selections, looking at life cycle cost data to assist Owner in making system selection decisions.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 The Construction Documents Phase shall not commence until the Owner has issued a Notice to Proceed for this phase to the Architect. Based on the Owner’s approval of the Design Development Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner’s approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor’s contractors will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

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

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

§ 3.4.4 The Architect shall review and promptly comment upon any update to the estimate of the Cost of the Work issued by the Construction Manager.

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

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner’s approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing (as described below) and otherwise cooperate with the Owner and the Construction Manager as they (1) obtain competitive bids for the Project; (2) confirm the responsiveness of bids; (3) determine the successful bid, if any; and, (4) award and prepare contracts for construction.
§ 3.5.2 COMPETITIVE BIDDING
§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

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

§ 3.5.2.3 The Architect shall consider review and comment on any requests for substitutions, if the Bidding Documents permit substitutions, but the Construction Manager shall be responsible for ultimately determining the outcome of requests for substitutions and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS NOT USED.

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

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

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

§ 3.6 CONSTRUCTION PHASE SERVICES
§ 3.6.1 GENERAL
§ 3.6.1.1 The Architect shall provide administration of the Contract of each of the Contracts between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify Construction, as modified by the parties thereto. If the Owner and Owner’s contractors modify their respective AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for any 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, any of Owner’s contractors or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for
§ 3.6.2 EVALUATIONS OF THE WORK

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

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

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

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

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

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor each contractor and shall issue certificates in such amounts—amounts within seven (7) days after receiving the applications for payment from the Construction Manager. The Architect’s certification for payment shall constitute a representation to the Owner, based on (1) the Architect’s evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor’s Application for Payment, (2) the data comprising each contractor’s Application for Payment or the data comprising the Project Application for Payment, and (3) the recommendation of the Construction Manager, that, to the best of the Architect’s knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from

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User Notes:
Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor’s right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor’s submittal schedule each contractor’s submittal schedule, or if a master schedule is created by the Construction Manager, then such master schedule, and shall not unreasonably delay or withhold approval. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness so as to cause no delay in the Work while allowing sufficient time in the Architect’s professional judgment to permit adequate review.

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

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

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

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Such changes shall be effected by written order issued by the Architect through the Construction Manager. The Architect shall review and sign, or take other appropriate action, on Change Orders and Construction Change Directives prepared by the Construction Manager for the Owner’s approval and execution in accordance with the Contract Documents.

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

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

§ 3.6.6.2 The Architect’s inspections shall be conducted with the Owner and Construction Manager 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 the Construction Manager and the applicable contractor of Work to be completed or corrected.

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

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

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

ARTICLE 4 ADDITIONAL SERVICES

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

<table>
<thead>
<tr>
<th>Additional Services</th>
<th>Responsibility (Architect, Owner or Not Provided)</th>
<th>Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 4.1.1 Programming (B202™–2009)</td>
<td>Not provided.</td>
<td>Provided pursuant to separate agreement as described in the Initial Information</td>
</tr>
<tr>
<td>§ 4.1.2 Multiple preliminary designs</td>
<td>Not provided.</td>
<td>Provided pursuant to separate agreement as described in the Initial Information</td>
</tr>
<tr>
<td>§ 4.1.3 Measured drawings</td>
<td>Architect</td>
<td>Part of Basic Services</td>
</tr>
<tr>
<td>§ 4.1.4 Existing facilities surveys</td>
<td>Not provided.</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.5 Site Evaluation and Planning (B203™–2007)</td>
<td>Not provided.</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.6 Building Information Modeling (E202™–2008)</td>
<td>Architect</td>
<td>Part of Basic Services</td>
</tr>
<tr>
<td>§ 4.1.7 Civil engineering</td>
<td>Architect</td>
<td>Additional Service, with the price to be fixed by written agreement of the parties after the execution of this Agreement.</td>
</tr>
<tr>
<td>§ 4.1.8 Landscape design</td>
<td>Architect</td>
<td>Part of Basic Services</td>
</tr>
<tr>
<td>§ 4.1.9 Architectural Interior Design (B252™–2007)</td>
<td>Architect</td>
<td>Part of Basic Services</td>
</tr>
</tbody>
</table>
§ 4.1.10 Value Analysis (B204™–2007) Not provided.
§ 4.1.11 Detailed cost estimating Not provided.
§ 4.1.12 On-site Project Representation (B207™–2008) Not provided.
§ 4.1.13 Conformed construction documents Architect Part of Basic Services
§ 4.1.14 As-Designed Record drawings Not provided.
§ 4.1.15 As-Constructed Record drawings Architect Part of Basic Services
§ 4.1.16 Post occupancy evaluation Not provided.
§ 4.1.18 Tenant-related services Not provided.
§ 4.1.19 Coordination of Owner’s consultants Not provided.
§ 4.1.20 Telecommunications/data design Not provided.
§ 4.1.22 Commissioning (B211™–2007) Not provided.
§ 4.1.23 Extensive environmentally responsible design Not provided.
§ 4.1.24 LEED™ Certification (B214™–2012) Not provided.
§ 4.1.25 Fast-track design services Not provided.
§ 4.1.26 Historic Preservation (B205™–2007) Not provided.
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™–2007) Not provided.
§ 4.1.29 Geotechnical Exploration and Engineering Not provided.
§ 4.1.30 Design of backflow prevention devices Not provided.
§ 4.1.31 NYS DEC stormwater management inspections Not provided.
§ 4.1.32 NY>SERDA energy modeling or services Not provided.
§ 4.1.33 Hazardous Materials (including asbestos containing) surveys and abatement design Not provided.
§ 4.1.34 3D architectural renderings or models Not provided.
§ 4.1.35 Marketing collaterals Not provided.
§ 4.1.36 Town approval process Architect The Owner shall compensate the Architect on an hourly basis for the services associated with the Village approval process. These services shall include, but not be limited to, attendance at Planning Board, Zoning Board, Village Board, workshop, and neighborhood association meetings, and all graphics and renderings required for the approval process and Owner’s marketing needs. The quantity and length of meetings and the approval process is unknown at this time.

§ 4.1.37 Unusual foundation conditions Not provided.

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

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.
§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner’s written authorization:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor’s contractor’s proposals and supporting data, or the preparation or revision of Instruments of Service;

4. Evaluating an extensive number of Claims as the Initial Decision Maker;

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

6. To the extent the Architect’s Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier, beyond the date set forth in Section 3.6.1.3.

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

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

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

3. one (1) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

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

§ 4.3.4 If the services covered by this Agreement have not been completed within nineteen (19) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as Additional Services.
ARTICLE 5 OWNER’S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 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, components systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the program and scope of the Project, and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner’s budget for the Cost of the Work. The Architect’s estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4. The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services, but only to the extent doing so is reasonable if acting in accordance with the Standard of Care. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

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

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

§ 6.6 If the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall give written approval of an increase in the budget for the Cost of the Work; authorize rebidding or renegotiating of the Project within a reasonable time; terminate in accordance with Section 9.5;
§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner’s budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect’s modification of the Construction Documents shall be the limit of the Architect’s responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect’s Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect’s consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub subcontractors, and material or equipment suppliers, as well as the Owner’s consultants and separate subcontractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate. Without payment of additional compensation to the Architect, the Drawings, Specifications and other documents, including Record Drawings prepared by the Architect for this Project, shall become the Owner’s property upon completion, cancellation, suspension or termination of the Work or this Agreement and upon payment of all sums due to the Architect for work properly performed. Reproducible copies of the original documents, including copies of structural and mechanical calculations, if any, shall be turned over to the Owner at that time. Documents originally prepared on CAD systems shall be turned over to the Owner in Auto CAD 2008 format.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect’s consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4. Reuse of any of these documents by the Owner to complete, repair or extend the Project shall be at Owner’s risk. The Architect shall be permitted to retain copies, including reproducible copies, of any or all documents for such use as it may require, except that use of any document without substantial modification shall be attributed to the Owner and shall have Owner’s prior written consent. Use by the Architect shall be at its own risk.

§ 7.3.2 To the extent that the Owner has paid for the Architect’s services under this Agreement, the Architect hereby grants to the Owner a non-exclusive, perpetual, royalty-free license to the design of the Project. Owner may make any changes, additions, and deletions to the Project design, in whole or in part, including, without limitation, destruction of any tangible portion of the design, all without further permission or consent of the Architect, although the Architect shall not be liable to the Owner or any third party as a result of any such changes, additions, or deletions. Owner
agrees to indemnify, defend and hold harmless Architect from and against any damages, losses, costs or expenses (including reasonable attorneys’ fees) arising out of the reuse by Owner of the design documents.

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. Notwithstanding the foregoing, nothing in this Agreement shall extinguish any right either party has to seek indemnity or contribution from the other, should a claim be asserted against a party to this Agreement by a third party based in any way on one or the other party’s performance of the work required of it on the Project. Any such claim for indemnity or contribution may be asserted at any time otherwise permitted under the law of the State of New York, without regard to choice of law principles.

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

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination of this Agreement, except as specifically provided in Section 9.7. To the fullest extent permissible by law, the Architect shall indemnify, defend and hold the Owner, Construction Manager, Airy Development Associates (the “Landlord”), and their respective officers, directors, members, partners, agents and employees (collectively, the “Indemnitees”) harmless from and against any and all liabilities, losses, costs, damages (including attorneys’ fees) without limitation, including bodily injury to persons (including death) or damage to property, delays or expenses, whether incurred as the result of a third-party claim or a claim by the Owner to enforce its rights hereunder to the extent arising out of, caused by or resulting from the negligent acts, errors or omissions of the Architect, its partners, agents or employees, except to the extent caused by the negligence of the Owner or another Indemnitee (the “Losses”). Notwithstanding the foregoing, Architect’s obligation to defend the Indemnitees shall not be deemed to require the advancing of defense costs for claims covered by the professional liability insurance Architect is required to carry hereunder. Such costs shall, however, be subject to reimbursement under this Section.

§ 8.2 MEDIATION

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

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

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

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

[X] Litigation in a court of competent jurisdiction

§ 8.3 ARBITRATION NOT USED

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

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

§ 8.3.4 CONSOLIDATION OR JOINDER

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

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this
Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and
Architect under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

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

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

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

§ 9.4 Either party may terminate this Agreement upon not less than seven fourteen 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. In the event of termination by Owner for cause, the Architect shall be liable for all damages
emanating from such termination.

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

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

§ 9.7 Termination Expenses are in addition to compensation for the Architect’s services and include expenses directly
attributable to termination for which the Architect is not otherwise compensated, plus an amount for the
Architect’s anticipated profit on the value of the services not performed by the Architect compensated. They
shall include only those reasonable, actual expenses which are directly attributable to termination which have been
fully substantiated by the Architect, and which have been approved by the Owner. They shall not include lost profit or
unabsorbed overhead.

§ 9.8 The Owner’s rights to use the Architect’s Instruments of Service in the event of a termination of this Agreement
are set forth in Article 7 and Section 14.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties
have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section
8.3–laws of the State of New York, without regard to its conflict of law rules.

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

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal
representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written
consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project
if the lender agrees to assume the Owner’s rights and obligations under this Agreement.
§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, provided, however, that this section shall not apply (i) to the specification of hazardous materials that are known to be hazardous at the time the specifications are developed or (ii) during the construction period and subject to the limitations set forth in section 3.6.2 and its subparts with regards to a contractor’s liability for methods and means of construction, to the Architect’s negligent acts or omissions with respect to hazardous materials that are present at the construction site. Notwithstanding the above, the Architect shall not be liable in any way for any damages which may result from the presence and handling of hazardous materials by the Owner or any contractor.

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall keep such information strictly confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent such party from establishing a claim or defense in an adjudicatory proceeding, and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11  COMPENSATION

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

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

A stipulated sum of Two Hundred Fifty Four Thousand Two Hundred Fifty Dollars ($254,250.00).

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

Hourly at the rates set forth in Section 11.7 below.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

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

Hourly at the rates set forth in Section 11.7 below.

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent ( 0%), or as otherwise stated below:
§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

<table>
<thead>
<tr>
<th>Phase</th>
<th>Compensation</th>
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<tr>
<td>Schematic Design Phase</td>
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<tr>
<td>Design Development Phase</td>
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<tr>
<td>Construction Documents Phase</td>
<td>$97,000</td>
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<tr>
<td>Bidding or Negotiation Phase</td>
<td>$5,000</td>
</tr>
<tr>
<td>Construction Phase</td>
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</table>

Total Basic Compensation: one hundred $254,250

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below.

<table>
<thead>
<tr>
<th>Employee or Category</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Principal</td>
<td>$250</td>
</tr>
<tr>
<td>Principal</td>
<td>$205</td>
</tr>
<tr>
<td>Sr. Project Manager &amp; Designer</td>
<td>$140</td>
</tr>
<tr>
<td>Sr. Technical Coordinator</td>
<td>$120</td>
</tr>
<tr>
<td>Sr. Structural Engineer – Dept. Mgr.</td>
<td>$150</td>
</tr>
<tr>
<td>Sr. Interior Designer – Dept. Mgr.</td>
<td>$140</td>
</tr>
<tr>
<td>Sr. Landscape Architect – Dept. Mgr.</td>
<td>$125</td>
</tr>
<tr>
<td>Sr. Graphic Designer – Dept. Mgr.</td>
<td>$115</td>
</tr>
<tr>
<td>Project &amp; Design Architect</td>
<td>$110</td>
</tr>
<tr>
<td>Technical Coordinator</td>
<td>$100</td>
</tr>
<tr>
<td>Structural Engineer</td>
<td>$110</td>
</tr>
<tr>
<td>Sr. Interior Designer</td>
<td>$105</td>
</tr>
<tr>
<td>Landscape Architect</td>
<td>$110</td>
</tr>
<tr>
<td>Senior Graphic Designer</td>
<td>$100</td>
</tr>
<tr>
<td>Technical Coordinator &amp; Intern</td>
<td>$65</td>
</tr>
<tr>
<td>Interior Designer</td>
<td>$85</td>
</tr>
<tr>
<td>Graphic Designer</td>
<td>$65</td>
</tr>
<tr>
<td>Technical Assistant</td>
<td>$60</td>
</tr>
</tbody>
</table>

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

1. Transportation and authorized out-of-town travel and subsistence;
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
3. Fees paid for securing approval of authorities having jurisdiction over the Project;
4. Printing, reproductions, plots, standard form documents;
5. Postage, handling and delivery;
6. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

(If applicable, attach an exhibit of hourly billing rates or insert them below.)
7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
8 Architect’s Consultant’s expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect’s consultants;
9 All taxes levied on professional services and on reimbursable expenses;
10 Site office expenses; and
11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus zero percent (0%) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT’S INSTRUMENTS OF SERVICE NOT USED.
If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner’s continued use of the Architect’s Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT
§ 11.10.1 An initial payment of zero ($0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

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

%—The prime rate set forth in the Wall Street Journal on the date payment is due.

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times. Hourly rates shall be comprised of 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, vacation, employee retreat plans and other similar contributions.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:

§ 12.1 Architect acknowledges that Owner’s rights related to the Project site are derived via that certain Lease Agreement with Landlord dated June 25, 1976, as amended by that certain Agreement dated August 30, 1979, that certain Second Amendment to Lease Agreement dated April 11, 1995, that certain Third Amendment to Lease Agreement dated February 8, 2012, and that certain Fourth Amendment to Lease Agreement dated .2012 (as amended, the "Lease"). At all times, Architect shall comply with all requirements of the Lease applicable to Architect and the provision of Architect’s Services to Owner, as tenant under the Lease.

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.
§ 13.2 This Agreement is comprised of the following documents listed below:

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

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

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

Exhibit A – Initial Information

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

OWNER
FAIRPORT PUBLIC LIBRARY

(Signature)  (Signature)
(Printed name and title)  (Printed name and title)

ARCHITECT
SWBR ARCHITECTURE, ENGINEERING AND LANDSCAPE ARCHITECTURE, P.C. d/b/a SWBR ARCHITECTS
Certification of Document’s Authenticity
AIA® Document D401™ – 2003

I, Darren Miller, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 15:18:32 on 05/21/2014 under Order No. 2114741929_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

____________________________
(Signed)

____________________________
(Title)

____________________________
(Dated)