

**AGENDA SEASIDE CITY COUNCIL MEETING**  
**MAY 22, 2017 7:00 PM**

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. PROCLAMATION - MENTAL HEALTH MONTH
6. COMMENTS FROM STUDENT REPRESENTATIVE, Lizzy Barnes (last meeting)
7. COMMENTS – PUBLIC – (please keep speaking time to four minutes)
8. DECLARATION OF POTENTIAL CONFLICT OF INTEREST
9. CONSENT AGENDA
  - a) PAYMENT OF THE BILLS - \$153,396.57
  - b) APPROVAL OF MINUTES - May 8, 2017
10. UNFINISHED BUSINESS:
  - a) PUBLIC HEARING - ORDINANCE 2017-03 - AN ORDINANCE OF THE CITY OF SEASIDE, OREGON, AMENDING THE ZONING MAP REFERENCED IN CODE OF SEASIDE ORDINANCE CHAPTER 151 CHANGING THE ZONING AT 2145 NORTH WAHANNA ROAD FROM SR TO R-3, Kevin Cupples (THIRD AND FINAL READING)
    - OPEN PUBLIC HEARING
    - CLOSE PUBLIC HEARING
    - COUNCIL COMMENTS
    - MOTION FOR THIRD READING BY TITLE ONLY – ALL IN FAVOR AND OPPOSED
    - MOTION TO ADOPT – ROLL CALL VOTE
  - b) ORDINANCE 2017-04 - AN ORDINANCE OF THE CITY OF SEASIDE, OREGON, ANNEXING CERTAIN TERRITORY EAST OF THE CITY, (Property located at 2145 North Wahanna Road), Kevin Cupples (THIRD AND FINAL READING)
    - OPEN PUBLIC COMMENTS
    - CLOSE PUBLIC COMMENTS
    - COUNCIL COMMENTS
    - MOTION FOR THIRD READING BY TITLE ONLY – ALL IN FAVOR AND OPPOSED
    - MOTION TO ADOPT - ROLL CALL VOTE
  - c) VACANCY - BUDGET COMMITTEE  
PARKS ADVISORY COMMITTEE

11. NEW BUSINESS

- a) UPDATE - SEASIDE SCHOOL DISTRICT 10 CONSTRUCTION PROJECT, Shiela Roley
- b) SIGN ORDINANCE AMENDMENT PETITION CONCERNING SANDWICH BOARD SIGNS, BY GRAY WHALE BBQ AND GRILL OWNER PATRICK SEAGER, Kevin Cupples
- c) RESOLUTION #3891 - A RESOLUTION ADOPTING AND APPROPRIATING SUPPLEMENTAL BUDGET INCREASES AND REDUCTIONS OF LESS THAN 10% FOR THE 2016-2017 CITY OF SEASIDE BUDGET
  - PUBLIC COMMENTS
  - COUNCIL COMMENTS
  - MOTION TO READ BY TITLE ONLY – ALL IN FAVOR AND OPPOSED
  - MOTION TO ADOPT - ALL IN FAVOR AND OPPOSED
- d) RESOLUTION #3892 - A RESOLUTION OF THE CITY OF SEASIDE, OREGON, EXTENDING SEASIDE'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF SEASIDE
  - PUBLIC COMMENTS
  - COUNCIL COMMENTS
  - MOTION TO READ BY TITLE ONLY – ALL IN FAVOR AND OPPOSED
  - MOTION TO ADOPT - ALL IN FAVOR AND OPPOSED
- e) FINAL - SEASIDE VISITORS BUREAU RE-SIDING AND WINDOW REPLACEMENT PROJECT
- f) CONTRACT AGREEMENT - Airbnb TRANSIENT ROOM TAX
- g) LICENSING AGREEMENT - RUBY'S ROADSIDE GRILL LLC
- h) SEASIDE CONVENTION CENTER RENOVATION/ADDITION - ARCHITECTURAL DESIGN CONTRACT, Russ Vandenberg

12. COMMENTS FROM THE CITY STAFF

13. COMMENTS FROM THE COUNCIL

14. ADJOURNMENT

Complete copies of the Current Council meeting Agenda Packets can be viewed at: *Seaside Public Library and Seaside City Hall. The Agendas and Minutes can be viewed on our website at [www.cityofseaside.us](http://www.cityofseaside.us).*

All meetings other than executive sessions are open to the public. When appropriate, any public member desiring to address the Council may be recognized by the presiding officer. Remarks are limited to the question under discussion except during public comment. This meeting is handicapped accessible. Please let us know at 503-738-5511 if you will need any special accommodation to participate in this meeting.

# CITY of SEASIDE

OREGON'S  
FAMOUS  
ALL-YEAR  
RESORT

989 BROADWAY  
SEASIDE, OREGON 97138  
(503) 738-5511

## PROCLAMATION

Whereas, mental health is part of overall health; and

Whereas, mental health helps to sustain an individual's thought processes, relationships, productivity and ability to adapt to change or face adversity; and

Whereas, mental illness adversely affects those abilities and often is life-threatening in nature; and

Whereas, one in five adults experiences mental health problems in any given year and such problems can contribute to onset of mental illness; and

Whereas one in 25 adults lives with mental illness such as major depression, bipolar disorder or schizophrenia; and

Whereas approximately one-half of chronic mental illness begins by the age of 14 and three-quarters by age 24; and

Whereas long delays—sometimes decades—often occur between the time symptoms first appear and when individuals get help; and

Whereas early identification and treatment can make a difference in successful management of mental illness and recovery; and

Whereas it is important to maintain mental health and learn the symptoms of mental illness in order to get help when it is needed; and

Whereas, every citizen and community can make a difference in helping end the silence and stigma that for too long has surrounded mental illness and discouraged people from getting help; and

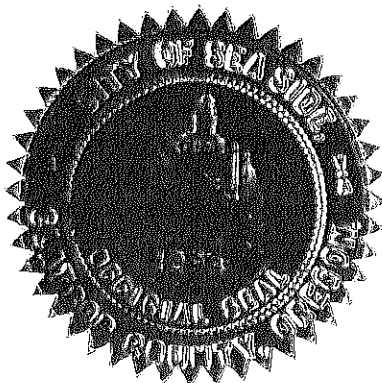
Whereas public education and civic activities can encourage mental health and help improve the lives of individuals and families affected by mental illness.

NOW, THEREFORE, I, Jay Barber, Mayor of the City of Seaside, do hereby proclaim the month of May, 2017 as:

### **Mental Health Month**

in SEASIDE to help increase public understanding of the importance of mental health and to promote identification and treatment of mental illnesses.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Seal of the City of Seaside to be affixed this 22<sup>nd</sup> day of May, 2017.



\_\_\_\_\_  
JAY BARBER, MAYOR

**ORDINANCE NO. 2017-03**

**AN ORDINANCE OF THE CITY OF SEASIDE, OREGON, AMENDING THE ZONING MAP REFERENCED IN CODE OF SEASIDE ORDINANCE CHAPTER 151 CHANGING THE ZONING AT 2145 N WAHANNA ROAD FROM SR TO R-3.**

**WHEREAS**, the Planning Commission conducted a public hearing regarding a proposed zone map amendment at 2145 North Wahanna Road (T6 R10 15AB TL: 201) that would re-designate the Suburban Residential (SR) zoned portions of the subject property High Density Residential (R-3) in order to permit urban density residential development of the upland portion of the property, and

**WHEREAS**, the Commission heard lengthy public testimony during public hearing February 7, 2017; and following that testimony they continued the hearing to their meeting on March 7<sup>th</sup> to provide additional time to consider the rezone request, and

**WHEREAS**, following the close of public comment and consideration of the proposed request during their meeting on March 7, 2017, the Planning Commission recommended the City Council approve zone change request 16-069ZC based on the applicant's submittal, the staff report, public testimony, adopted findings and conclusions that support the proposed amendment; and

**WHEREAS**, the City Council held their own public hearing and reviewed the Commission's recommendation on zone change 16-069ZC during their meeting on April 24, 2017, and **ultimately** determined the request is consistent with the provisions in the City's Comprehensive Plan and it will not undermine the Plan's compliance with the Statewide Planning Goals.

**NOW, THEREFORE, THE CITY OF SEASIDE ORDAINS AS FOLLOWS:**

**SECTION 1.** Amend the zoning map referenced in Section 2.030 of the Seaside Zoning Ordinance, as follows:

Change the Suburban Residential (SR) zoned upland portion of the subject property at 2145 N Wahanna Road to High Density Residential (R-3). Said portion of the subject property to be rezoned is identified on the attached map.

**SECTION 2.** The Seaside City Council did hold a public hearing on April 24, and May 8, 2017, during which the public was given an opportunity to testify in favor and in opposition of the zone change.

**SECTION 3.** The City Council hereby approves the zone change (file reference #16-069ZC) based on the adopted information in the Planning Commission's recommendation and the testimony and information obtained during the Council's public hearing **process**.

**ADOPTED** by the City Council of the City of Seaside on this \_\_\_ day of \_\_\_\_\_, 2017, by the following roll call vote:

- YEAS:
- NAYS:
- ABSTAIN:
- ABSENT:

**SUBMITTED** to and **APPROVED** by the Mayor on this \_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

\_\_\_\_\_  
JAY BARBER, MAYOR

\_\_\_\_\_  
Mark J. Winstanley, City Manager

**CITY OF SEASIDE MEMORANDUM**

**To:** Mayor & City Council  
**From:** Community Development Department  
**Date:** May 8, 2017  
**Owners:** James Folk, Sierra Partners, P.O. Box 2165; Gearhart, OR 97138  
**Applicant:** Jennifer Bunch, Wickiup Consulting, P.O. Box 1455, Astoria OR 97103  
**Location:** 2145 N Wahanna Rd, T6-R10-15AB-TL201  
**Subject:** Continuance 16-069ZC- Zone Change from Suburban Residential (SR) to High Density Residential (R-3)

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**Additional Information for Consideration:**

At the last City Council meeting, the Council continued zone map amendment that will change the upland Suburban Residential (SR) zoned portions of the above referenced property (approximately 2.05 acres) to High Density Residential (R-3).

The Council asked that any additional written testimony be submitted by Wednesday May 3<sup>rd</sup> at 5:00p.m. Additional information was submitted by the following individuals:

Susan McDonald

Glen & Ruby Malvaney

Jennifer Bunch

Their submittals are attached for your consideration along with an email previously sent to Susan Romersa by staff in response to her email.

**Additional Staff Finding:**

Although the initial thought was that sewer could be run to the Pine Cove Pump Station, where there is sufficient capacity to accommodate the additional flow; the downstream sewer improvements do not have sufficient capacity at this time to accommodate the additional flow from full development under an R-2 or R-3 zone designation.

Any change in zone permitting higher density development would be done with the owner's understanding that additional sewer infrastructure improvements will be needed before higher density development could occur.

**Final Recommended City Council Action:**

Complete the continued public hearing on the proposed zone change. Following testimony, determine if any findings need to be added to the Planning Commission's recommendation. Provided testimony during the public hearing does not lead to findings which indicate the proposed change will violate the Comprehensive Plan or undermine the integrity of the Plan's compliance with State wide Planning Goals, make a motion to approve zone change request 16-069ZC based on the Commission's recommendation (including the additional staff finding above) and ask that Ordinance No. 2017-03 (attached) be read "by title only." This ordinance is the document that will formally recognize the Council's approval of the request and authorize the change on the City's Zoning Map.

Following the first reading, a motion for a second reading "by title only" will be needed. The third reading and final adoption would then take place during the next council meeting scheduled on May 8, 2017.

**Annexation Ordinance Action:** The same Council process; public hearing followed by a motion to read Annexation Ordinance No. 2017-04 "by title only" would follow any Council action to approve the zone change request.. This ordinance is the document that will bring the subject property into the city and allow city services to be made available to the property.

Attachments:

Additional Written Materials

Ordinance No. 2017-03

Ordinance No 2017-04

**ORDINANCE NO. 2017-04**

**AN ORDINANCE OF THE CITY OF SEASIDE, OREGON,  
ANNEXING CERTAIN TERRITORY EAST OF THE CITY  
(Property located at 2145 North Wahanna Road)**

WHEREAS, there has been submitted to the City of Seaside, a written proposal for annexation to the City by the owner's consent, who also owns all of the land in the contiguous territory, described below which real property therein represents all of the assessed value of all real property in the contiguous territory to be annexed:

NOW, THEREFORE, THE CITY OF SEASIDE ORDAINS AS FOLLOWS:

**SECTION 1. ANNEXATION AREA:**

**ALL THE PROPERTY DESCRIBED IN THE LEGAL DESCRIPTION FOR PROPERTY, CLATSOP COUNTY DEED RECORDS, UNDER RECORDING INSTRUMENT # 201507850 LOCATED EAST OF NORTH WAHANNA ROAD.**

Clatsop County Tax ID 10055                      Map #6 10 15 AB                      Tax Lot 00201  
Situs Address: 2145 North Wahanna Road

**SECTION 2. ZONE** – The upland portion of the subject property is zone High Density Residential (R-3) and the wetland area is zoned Freshwater Wetland (A-3) in accordance with the zones established under the City of Seaside Comprehensive Plan & The Zoning Ordinance of Seaside, Oregon.

**SECTION 3. RECORD** – The City Auditor shall submit to the Secretary of the State of Oregon: (1) A copy of this Ordinance, and (2) a copy of the Statement of Consent of the landowner in the territory annexed. The City Auditor shall also send a description by metes and bounds or legal subdivisions of the new boundaries of the City of Seaside within ten (10) days of the effective date of annexation to the Clatsop County Assessor, the Clatsop County Clerk, and the Clatsop County Planning Department.

**SECTION 4. FIRE PROTECTION** – The subject property is hereby withdrawn from the Seaside Rural Fire Protection District and included in the City of Seaside for fire protection purposes.

**SECTION 5. ROAD DISTRICT** - The subject property is hereby withdrawn from the Clatsop County Road District No. 1 and included in the City of Seaside Road District.

**SECTION 6. POLICE PROTECTION** – The subject property is hereby withdrawn from the Clatsop County Law Enforcement District and included in the City of Seaside for police protection purposes.

**SECTION 7. WATER PROVISION** – The subject property is hereby withdrawn from the Stanley Acres Water District and included in the City of Seaside for the purpose of providing water.

**SECTION 8. FINDINGS** – The City Council makes the following findings pertinent to the annexation:

- A. The City of Seaside has an acknowledged Comprehensive Plan.
- B. The subject property is within the City's adopted Urban Growth Boundary.
- C. The properties are contiguous to the City Limits.
- D. There is unanimous consent of the property owners.

**SECTION 9. EFFECTIVE DATE** – The effective date of this Ordinance is \_\_\_\_\_, 2017, in accordance with ORS 222.040 and 222.180.

**ADOPTED** by the City Council of the City of Seaside on this \_\_\_ day of \_\_\_\_\_, 2017, by the following roll call vote:

YEAS:  
NAYS:  
ABSTAIN:  
ABSENT:

**SUBMITTED** to and **APPROVED** by the Mayor on this \_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
JAY BARBER, MAYOR

ATTEST:

\_\_\_\_\_  
Mark J. Winstanley, City Manager

APPLICATION FOR ANNEXATION  
CITY OF SEASIDE  
989 BROADWAY  
SEASIDE OREGON 97138  
(503) 738-5511

1. Applicant(s) (Please Print) James Folk  
Sierra Partners IV, LLC.

2. Applicant's mailing address: P.O. Box 2165  
Street Gearhart OR  
City OR 97138  
State Zip

3. Telephone Numbers:  
Home 503-956-1670  
Work 503-956-1670

4. Legal description of property requested to be annexed (as a minimum attach a Tax Map): 61015AB00201

5. In the event this proposed annexation is approved, are you aware of the zoning on the subject property? Please briefly explain: yes

Signature of Applicant James Folk

State of OREGON; County of CLATSOP Signed or

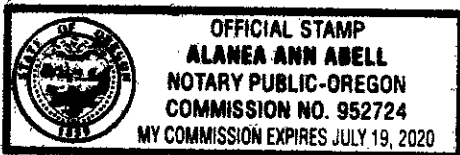
attested before me on APRIL 25, 2017 (date)

by JAMES E. FOLK (name(s) of person(s))

Alana Abell  
Notary Public for Oregon

Title Personal Banker

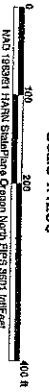
My commission expires: JULY 19, 2020



NOTE: PROCESS WILL TAKE FROM 60 TO 120 DAYS



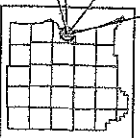
T6N R10W SEC 15AB WM  
 CLATSOP COUNTY  
 Scale 1:1200



Cancelled Accounts:  
 101  
 102  
 100  
 200  
 300  
 400  
 500  
 600  
 700  
 800  
 900  
 1000



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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This map was prepared for the purpose of recording the plat of the County of Clatsop, Oregon, and is subject to the provisions of the Clatsop County Code, Chapter 10, Section 10.01, and the Clatsop County Code, Chapter 10, Section 10.02.

February 01, 2017  
 6.10.15AB

## **SEASIDE BUDGET COMMITTEE**

The Seaside Budget Committee meets publicly to review the budget documents as proposed by the budget officer. The budget committee receives the budget and budget message and provides an opportunity for the public to ask questions about and comment on the budget. The committee also approves a budget, and, if ad valorem property taxes are required, approves an amount or rate of tax for all funds that receive property taxes.

The budget committee is composed of the governing body and an equal number of electors appointed by the governing body. All members of the budget committee have equal authority. An elector is a qualified voter who has the right to vote for the adoption of any measure. If the governing body cannot find a sufficient number of electors who are willing to serve, those who are willing and the governing body become the budget committee.

Applicants for the Budget Committee need to be registered voters of the City of Seaside for at least one year prior to serving on the Committee. The appointive members of the budget committee cannot be officers, agents or employees of the local government. Spouses of officers, agents or employees of the local government are not barred from serving on the budget committee if they are qualified electors and not themselves officers, agents, or employees. Appointive members of the budget committee are appointed for three-year terms.

The committee shall elect a presiding officer from among the members at the first meeting. No member of the budget committee may receive any compensation for their services as a member of the committee.

## COMMITTEE/COMMISSION APPOINTMENT

1. **Date Council Notified:** March 13, 2017  
  
**Name:** Steve Wright  
Genesee Dennis  
  
**Commission/Committee:** Budget Committee  
  
**Resignation Date:** Wright - March 1, 2017  
Dennis - March 13, 2017  
  
**Term Expiration Date:** December 31, 2018  
  
**Wants to be considered again:** Wright - No (City Councilor)  
Dennis - No
2. **Applicants:**  
Robert Perkel
3. **Nominations:**
4. **Appointment:**

**Please Note: It is Council policy that applicants must be a city or urban growth boundary resident, business owner or employee of a business for at least one year, depending on committee/commission residency requirements.**

### CITY OF SEASIDE

Interest Form for Committee/Commission/Board Vacancies

PLEASE RETURN TO CITY HALL BY: \_\_\_\_\_

NAME PERKEL ROBERT PHONE 971, 320-0008

ADDRESS 2039 Huckleberry Drive

LENGTH OF TIME IN SEASIDE over 15 years

ARE YOU A REGISTERED VOTER IN SEASIDE:  Yes No

OCCUPATION RETIRED

PAST OCCUPATIONS OREGON STATE EMPLOYMENT Dept - 20 years  
Gift Basket Business - THE GARDEN MARKET - 4 years

List committee/commissions you are currently appointed to: NONE

List committee/commissions on which you would like to serve: Budget Committee

List fields in which you have interest or ability: I like working with committees  
like community work, excellent organizational skills

List employment and volunteer activities, which may relate to service on committee/commissions:  
I WAS A PAST member of the SEASIDE IMPROVEMENT COMMISSION  
SEASIDE TRANSADU COMMISSION AND SEASIDE PLANNING COMMISSION

List skills and special knowledge that you may have acquired from these activities:  
DECISION MAKING, people skills, investigations.

Have you ever been convicted, pled guilty or pled "no contest" to any crime, offense, or major traffic violation? Yes ( ) No  If yes, what offense? \_\_\_\_\_

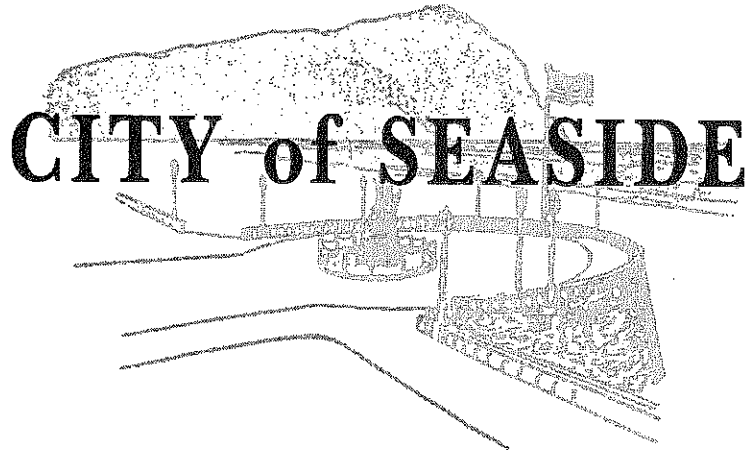
When? \_\_\_\_\_ Please explain: \_\_\_\_\_

Please list 3 references including an employer or supervisor, and people that have known you for at least 2 years. (No City Council Members, Please)

NAME	RELATIONSHIP	ADDRESS	PHONE
<u>MARC WINSTANLEY</u>	<u>FRIEND</u>	<u>City Hall</u>	<u>503-738-5511</u>
<u>DALE McDOWELL</u>	<u>FRIEND</u>	<u>Public Works</u>	<u>503-738-8765</u>
<u>Kevin Cupples</u>	<u>Worked on the Planning Commission</u>	<u>City Planning</u>	<u>503-738-7100</u>

I authorize, any person or entity contacted by the City of Seaside to furnish information relating to my appointment to the Commission/Committee/Board indicated above and I release any such person or entity from any and all liability for furnishing such information. I also release the City of Seaside from any and all liability for conducting such an investigation.

DATE 4/27/17 SIGNATURE Robert E. Perkel



OREGON'S  
FAMOUS  
ALL-YEAR  
RESORT

989 BROADWAY  
SEASIDE, OREGON 97138  
(503) 738-5511

**BUDGET COMMITTEE**

Term of Office: 3 years  
Number of Members: 14 (Includes City Council)

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>	<b><u>PHONE</u></b>	<b><u>TERM EXPIRES</u></b>
JAMES SHIPLEY	284 ALPINE ST.	717-0392	12/31/2017
REBECCA BUCK	P O BOX 1152	738-3045	12/31/2017
NANCY MCCUNE	822 NECANICUM #101	503-260-8905	12/31/2017
VACANCY			12/31/2018
VACANCY			12/31/2018
LES MCNARY	1624 S. FRANKLIN	738-0759	12/31/2019
KATHLEEN PETERSON	1640 HUCKLEBERRY DR.	440-5543	12/31/2019

## **SEASIDE PARKS ADVISORY COMMITTEE**

The purpose of the Seaside Parks Advisory Committee is to act as an advisory body to the City Council, the City Manager, and the Public Works Director regarding issues concerning the Seaside Parks.

The committee shall consist of seven members who are not officials or employees of the City and who will be appointed by the City Council. A minimum of six members shall reside within the city limits, and a maximum of one member may reside within the Urban Growth Boundary. No more than two members shall be engaged in the same kind of occupation, business, trade or profession. The Mayor shall appoint one member of the City Council as Council liaison, and the City Manager or his designee, shall be the Staff liaison to the Committee.

The members shall serve without salary or compensation of any nature.

All members shall be appointed by the City Council and shall serve for a term of three years. The initial terms will be: two members shall be appointed for a term of one year, two members for two years, and three members for three years. As those terms expire, all vacancies will be filled for three year terms.

Each year, at the first Committee meeting in January, the members shall appoint one of their members as Chairperson and one as Vice-Chairperson. One of the Committee members will serve as Secretary. Minutes of all meetings will be filed with the City Council.

The Committee shall hold a regular meeting at least once each month of the calendar year. The meetings shall be open to the public. Any person appointed by the City Council to serve on this committee who misses three or more regularly scheduled meetings during a 12 month period shall be notified by letter that the position must be vacated. The individual may appeal the decision to the City Council. ( A 12 month period is defined as beginning in January of each calendar year.)

## **COMMITTEE/COMMISSION APPOINTMENT**

- 1. Date Council Notified:** April 24, 2017

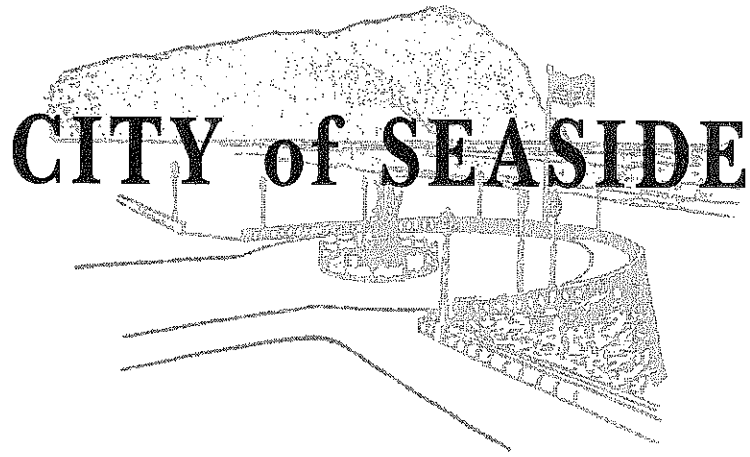
**Name:** Jason Boyd  
Mary Blake  
Norman Brown

**Commission/Committee:** Parks Advisory Committee

**Resignation Date:** Term Expirations

**Term Expiration Date:** March 31, 2017

**Wants to be considered again:** Boyd - has not confirmed  
Blake - No  
Brown - Yes
- 2. Applicants:**  
Norman Brown
- 3. Nominations:**
- 4. Appointment:**



OREGON'S  
FAMOUS  
ALL-YEAR  
RESORT

989 BROADWAY  
SEASIDE, OREGON 97138  
(503) 738-5511

**PARKS ADVISORY COMMITTEE**

Term of Office: 3 years      Chairperson\*  
 Number of Members: 7      Vice Chairperson\*\*  
                                                                                  Secretary\*\*\*

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>	<u>TERM EXP.</u>
JASON BOYD*	1940 Huckleberry	738-4363	3/31/2017
MARY BLAKE	1668 Whispering Pines	717-3810	3/31/2017
NORMAN BROWN***	3041 Evergreen Dr.	738-5132	3/31/2017
MICHAEL HINTON	1015 S. IRVINE PL.	738-5748	3/31/2018
NANCY HOLMES**	1520 COOPER ST.	717-1614	3/31/2018
STEVEN PHILLIPS	PO BOX 1099	738-5402	3/31/2019
CHRIS QUACKENBUSH	950 Avenue 'K'	440-2827	3/31/2019
TOM HORNING	808 26TH AVENUE	738-5770	<a href="mailto:horning@pacifier.com">horning@pacifier.com</a>
DALE MCDOWELL	1387 AVENUE 'U'	738-5112	<a href="mailto:dmcowell@cityofseaside.us">dmcowell@cityofseaside.us</a>



# Memo

**To:** Mayor & City Councilors  
**From:** Planning Director, Kevin S. Cupples  
**Date:** May 22, 2017  
**Re:** Sandwich Board Signs

---

Patrick Seager, owner of the Gray Whale BBQ and Grill has submitted a petition concerning a proposed change to the sign ordinance. It would simply remove the provision that "A-Frame" or "Sandwich Board" signs located on private property need to be located not more than 10 feet from the entrance of a building.

Although the proposed change seemed relatively minor, staff did ask the Planning Commission for input on the proposed amendment prior to bringing the request before the City Council. The Commission was evenly split over the proposed amendment. Three Commissioners expressing concerns over the potential impacts and they believed it deserved more consideration while the other three agreed the change seemed reasonable.

In looking back at prior ordinances (as suggested by Commissioners Ridout), it appears the 10 foot restriction was incorporated into the ordinance when it was revised in 2002. At that time, there was some public comment before the Planning Commission against allowing sandwich board signs and the Commission believed the added restriction would limit their use.

Since these types of signs are temporary and tend to come and go at will, complaint driven enforcement makes their regulation very inconsistent. Staff would like to have the Council review Mr. Seager's attached information and determine if:

- No change to the ordinance is believed to be necessary at this time,
- The seemingly minor change warrants consideration and direct staff to simply draft an amendment to the ordinance for Council review & final action, or
- The proposed change should be formally reviewed by the Planning Commission to determine if this or some other modification should be considered prior to the Council taking any further action. Although not required, this could include a public hearing process before the Planning Commission prior to any formal recommendation to the Council.

RESOLUTION #3891

A RESOLUTION ADOPTING AND APPROPRIATING SUPPLEMENTAL  
BUDGET INCREASES AND REDUCTIONS OF LESS THAN 10%  
FOR THE 2016-2017 CITY OF SEASIDE BUDGET

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Seaside hereby adopts the following supplemental budget increases and reductions for 2016-2017; and

BE IT FURTHER RESOLVED that the amounts for the fiscal year beginning July 1, 2016, and for the purpose shown below are hereby adjusted and appropriated as follows:

STREET CONSTRUCTION  
Resources

	Present	Changes	New
Beginning Fund Balance	\$ 2,181	\$ -	\$ 2,181
Transfer - District Road	370,000	(4,948)	365,052
Transfer - Water	2,000	2,547	4,547
Transfer - Sewer	0	30,954	30,954
Transfer - State Tax Street	285,000	74,616	359,616
Interest On Investments	500	701	1,201
Seaside Urban Renewal	150,000	(50,220)	99,780
<b>Total</b>	<b>\$ 809,681</b>	<b>\$ 53,650</b>	<b>\$ 863,331</b>

STREET CONSTRUCTION  
Requirements

	Present	Changes	New
Materials & Services	\$ 6,000	\$ (2,879)	\$ 3,121
Capital Outlay	803,681	56,529	860,210
<b>Total</b>	<b>\$ 809,681</b>	<b>\$ 53,650</b>	<b>\$ 863,331</b>

FIRE EQUIPMENT (2013)  
Resources

	Present	Changes	New
Beginning Fund Balance	\$ 2,651	\$ -	\$ 2,651
Tax Levy	119,906	0	119,906
Est Taxes Not To Be Rec'd	(9,592)	900	(8,692)
Delinquent Taxes	3,500	0	3,500
Tax Offsets	50	0	50
Interest On Tax Receipts	613	0	613
Interfund Loan - Sys Dev (Wtr)	138,206	0	138,206
<b>Total</b>	<b>\$ 255,334</b>	<b>\$ 900</b>	<b>\$ 256,234</b>

FIRE EQUIPMENT (2013)  
Requirements

	Present	Changes	New
Materials & Services	\$ 900	\$ 900	\$ 1,800
Special Payments	254,434	0	254,434
<b>Total</b>	<b>\$ 255,334</b>	<b>\$ 900</b>	<b>\$ 256,234</b>

Passed by the City Council of Seaside on this \_\_\_ day of \_\_\_\_\_, 2017.

Submitted to the Mayor and Approved by the Mayor on this \_\_\_ day of \_\_\_\_\_, 2017.

JAY A. BARBER, MAYOR

ATTEST:

Mark J. Winstanley, City Manager

**NOTICE OF A PUBLIC MEETING  
FOR SUPPLEMENTAL BUDGETS  
Of less than 10% of Fund Expenditures**

A public meeting on proposed supplemental budgets of less than 10% for the City of Seaside, Clatsop County, State of Oregon for the fiscal year July 1, 2016 to June 30, 2017 will be held at City Hall, 989 Broadway, Seaside, Oregon. The public meeting will take place during the regularly scheduled City Council meeting on the 22nd of May, 2017 at 7:00 P.M. The purpose of the public meeting is to consider a resolution adopting the supplemental budgets and making necessary appropriations. A copy of the supplemental budget document may be inspected or obtained on or after May 9, 2017 at City Hall, between the hours of 8:00 A.M. and 5:00 P.M.

**SUMMARY OF SUPPLEMENTAL BUDGETS**

**FUND: Street Construction**

Resources		Requirements	
Transfer - District Road	\$ (4,948)	Materials & Services	\$ (2,879)
Transfer - Water	2,547	Capital Outlay	56,529
Transfer - Sewer	30,954		
Transfer - State Tax Street	74,616		
Interest On Investment	701		
Seaside Urban Renewal	(50,220)		
<b>Revised Total Resources</b>	<b>\$ 863,331</b>	<b>Revised Total Requirements</b>	<b>\$ 863,331</b>

**COMMENTS:** To increase budget for infrastructure improvements on N. Holladay.

**FUND: Fire Equipment (2013)**

Resources		Requirements	
Estimated Taxes Not To Be Rec'd	\$ 900	Materials & Services	\$ 900
<b>Revised Total Resources</b>	<b>\$ 256,234</b>	<b>Revised Total Requirements</b>	<b>\$ 256,234</b>

**COMMENTS:** To increase budget for additional interest costs.

# RESOLUTION #3892

## A RESOLUTION OF THE CITY OF SEASIDE, OREGON, EXTENDING SEASIDE'S WORKERS' COMPENSATION COVERAGE TO VOLUNTEERS OF THE CITY OF SEASIDE

Effective Date: July 1, 2017

A resolution extending workers' compensation coverage to volunteers of City of Seaside in which City of Seaside elects the following:

Pursuant to ORS 656.031, workers' compensation coverage will be provided to the classes of volunteers listed in this resolution, noted on CIS payroll schedule, and verified at audit:

### 1. Public Safety Volunteers

Applicable  Non-applicable \_\_\_\_\_

An assumed monthly wage of \$2,000 per month per volunteer will be used for public safety volunteers in the following volunteer positions (check all that apply):

- Police reserve
- Search and rescue
- Firefighter
- Emergency medical personnel
- Ambulance drivers
- Other – Volunteers Police Department

### 2. Volunteer boards, commissions, and councils for the performance of administrative duties.

Applicable  Non-applicable \_\_\_\_\_

An aggregate assumed annual wage of \$2,500 will be used per each volunteer board, commission, or council for the performance of administrative duties. The covered bodies are (list each body):

- |                               |                                           |
|-------------------------------|-------------------------------------------|
| a. City Council               | h. Community Center and Senior Commission |
| b. Improvement Commission     | i. Convention Center Commission           |
| c. Planning Commission        | j. Airport Committee                      |
| d. Parks Advisory Committee   | k. City Tree Board                        |
| e. Tourism Advisory Committee | l. Transportation Advisory Commission     |
| f. Library Board              | m. Budget Committee                       |
| g. Building Board of Appeals  |                                           |

### 3. Manual labor by elected officials.

Applicable \_\_\_\_\_ Non-applicable

An assumed monthly wage of \$800 per month will be used for public officials for the performance of non-administrative duties other than those covered in paragraph 2 above

List duties

### 4. Non-public safety volunteers

Applicable  Non-applicable \_\_\_\_\_

All non-public safety volunteers listed below will track their hours and Oregon minimum wage will serve as assumed wage for both premium and benefits calculations. CIS will assign the appropriate classification code according to the type of volunteer work being performed. (List specific non-public safety volunteers below)

- Parks and recreation
- Senior center
- Public works
- Library
- Visitors Bureau

**5. Public Events**

Applicable \_\_\_\_\_ Non-applicable X

Volunteers at the following public events will be covered under workers' compensation coverage using verified hourly Oregon minimum wage as basis for premium and/or benefit calculation: (List specific events)

**6. Community Service Volunteers/Inmates**

Applicable \_\_\_\_\_ Non-applicable X

Pursuant to ORS 656.041, workers' compensation coverage will be provided to community service volunteers commuting their sentences by performing work authorized by

Oregon minimum wage tracked hourly will be used for both premium and benefit calculations, verifiable by providing a copy of the roster and/or sentencing agreement from the court.

**7. Other Volunteers**

Volunteer exposures not addressed here will have workers' compensation coverage if, prior to the onset of the work provided that City of Seaside

- a. Provides at least two weeks' advance written notice to CIS underwriting requesting the coverage
- b. CIS approves the coverage and date of coverage
- c. CIS provides written confirmation of coverage

**City of Seaside agrees to maintain verifiable rosters for all volunteers including volunteer name, date of service, and hours of service and make them available at the time of a claim or audit to verify coverage.**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the Seaside to provide workers' compensation insurance coverage as indicated above. This resolution will be updated annually.

**PASSED** by the City Council of the City of Seaside on this \_\_\_\_ day of \_\_\_\_\_, 2017.

**SUBMITTED** by the Mayor and **APPROVED** by the Mayor on this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
JAY BARBER, MAYOR

ATTEST:

\_\_\_\_\_  
Mark J.Winstanley, City Manager

# MEMORANDUM

TO: Honorable Mayor & City Council  
FROM: Jon Rahl, Assistant GM & Tourism Marketing Director, Seaside VB & CC  
DATE: Thursday, May 18, 2017  
RE: City of Seaside Visitors Bureau Building Maintenance Project  
Project No: 2016-01/SVB

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Helligso Construction Co. has completed the siding and window improvements on east and south facing walls of the Visitors Bureau and Chamber Building. The completed works was approved and staff would like to request that the Mayor and City Council release the retainage of \$2,121.10 to Helligso Construction Co.

# MEMORANDUM

TO: Mayor Jay Barber and Seaside City Council  
FROM: Jon Rahl, Assistant GM & Tourism Marketing Director, Seaside VB & CC  
DATE: Tuesday, May 16, 2017  
RE: City of Seaside agreement with Airbnb

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Honorable Mayor and Seaside City Councilors-

Founded in 2008 in San Francisco by a group of roommates, Airbnb has grown globally to the tune of more than three million room and housing listings in 65,000 cities across 191 countries. Over the last three years, the state of Oregon and several communities across the state have executed contractual agreements with Airbnb to insure rental taxes are collected at the time of rental on Airbnb.com.

Currently, the only guaranteed bed tax collected on an Airbnb listing in Seaside is a state tax, thanks to an agreement the state signed with Airbnb in 2014. During the past few months, we have had our own discussions about such an agreement with Airbnb to help insure all bed tax through this growing room sharing service is collected under City of Seaside ordinances established many years ago.

After reviewing the terminology and consulting with our attorney, Mr. Dan Van Thiel, we recommend signing an agreement with Airbnb. The agreement will become effective June 1 and all taxes related to Seaside listings on Airbnb will begin collecting taxes on July 1, 2017.

A feature that asks all Airbnb hosts (homes) to provide their business license number – which is then housed through the Airbnb rental interface and can be used as a resource for city staff to help authenticate whether Airbnb homes in Seaside are properly licensed – will provide a tool for Seaside to help monitor the licensure status of Airbnb listings.

Coupled with the purchase of a software program license called STR Helper that will assist in the auditing process for any properties listed for rental on popular vacation websites like Airbnb.com, VRBO.com, HomeAway.com, VacationRentals.com and others, we believe this will help make sure Seaside is properly collecting lodging tax from those renting any housing unit in Seaside as a short-term rental unit.

## **Tactic to improve TRT collections in Seaside**

### **Cost**

- |                                                         |                   |
|---------------------------------------------------------|-------------------|
| • Cost for long-term agreement with Airbnb              | \$0               |
| • Cost for initial setup and first year with STR Helper | \$8,000 (2017-18) |
| • Cost for STR Helper per year thereafter               | \$5,000 (2018-19) |

## **Benefits to City of Seaside of Contract and Software License**

- Insure TRT is collected by any home/unit listed with Airbnb (currently unavailable)
- Business License Number listed on Airbnb.com (currently unavailable)
- Ability to scan addresses throughout Seaside via software to audit listing as a short-term rental
- Ability to send letter requesting compliance (for those that aren't) with the click of a button
- Many other benefits can be provided upon request

**VOLUNTARY COLLECTION AGREEMENT  
FOR  
CITY OF SEASIDE, OREGON TRANSIENT ROOM TAX**

**THIS VOLUNTARY COLLECTION AGREEMENT** (the “**Agreement**”) is dated is between **AIRBNB, INC.**, a Delaware corporation (“**Airbnb**”) and City of Seaside, Oregon (the “**Taxing Jurisdiction**”). Each party may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS:**

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “**Platform**”) through which third parties offering accommodations (“**Hosts**”) and third parties booking such accommodations (“**Guests**”) may communicate, negotiate and consummate a direct booking transaction for accommodations to which Airbnb is not a party (“**Booking Transaction**”);

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of alleged applicable transient room taxes (“**TRT**”) imposed under applicable City of Seaside, Oregon law (the applicable “**Code**”) for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in the City of Seaside, Oregon (the “**Taxable Booking Transactions**”);

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform, Airbnb agrees contractually to assume the duties of a TRT collector as described in the Code (hereinafter referred to as a “**Collector**”).

(B) Starting on July 1, 2017 (the “**Effective Date**”), Airbnb agrees to commence collecting and remitting TRT, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (L) below, Airbnb shall not assume any obligation or liability to collect TRT for any period or for any transaction prior to the Effective Date or termination of this Agreement.



## **REMITTANCE OF TRT**

(C) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including all TRT that is subject to the provisions of this Agreement, and it shall remit all TRT collected from Guests in accordance with this Agreement and Airbnb's Terms of Service ([www.airbnb.com](http://www.airbnb.com)) (the "TOS") in the time and manner described in the Code or as otherwise agreed to in writing.

## **AIRBNB LIABILITY**

(D) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of TRT, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any TRT and/or penalties, interest, fines or other amounts assessed against it were not due, are the subject of a claim for refund under applicable law or otherwise bar it from enforcing any rights accorded by law.

(E) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of TRT returns and supporting documentation, and agrees not to directly or indirectly audit any individual Guest or Host relating to Taxable Booking Transactions unless and until an audit of Airbnb by the Taxing Jurisdiction has been exhausted with the matter unresolved. The Taxing Jurisdiction reserves the right to audit any individual Airbnb Host for activity that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(F) The Taxing Jurisdiction agrees to audit Airbnb on an anonymous numbered account basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Booking Transaction without binding legal process served only after completion of an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The Taxing Jurisdiction agrees that it will not audit or issue an assessment against Airbnb more than once per any consecutive forty-eight month period and that such audit or assessment will be limited to a consecutive twelve-month period within the forty-eight month period.

(G) Airbnb, Inc. agrees to register as a Collector for the reporting, collection and remittance of TRT under this Agreement and will be the registered Collector on behalf of any affiliate or subsidiary collecting TRT.

#### **GUEST AND HOST LIABILITY**

(H) During any period in which this Agreement is effective relating to Taxable Booking Transactions, Hosts shall be encouraged to register individually with the Taxing Jurisdiction to collect, remit and/or report TRT, provided Airbnb is in compliance with its obligations herein. Nothing in this Agreement shall relieve Guests or Hosts from any responsibilities with respect to TRT for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

#### **WAIVER OF LOOK-BACK**

(I) The Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders investors, employees and other agents, and/or Hosts or Guests from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of TRT or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to TRT on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

#### **NOTIFICATION TO GUESTS AND HOSTS**

(J) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that it will notify (i) Hosts that TRT will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of TRT collected and remitted on each Taxable Booking Transaction.

#### **LIMITATION OF APPLICATION**

(K) This Agreement is solely for the purpose of facilitating the administration and collection of the TRT with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence thereof under the Code

or any other provisions of the laws of the United States of America, of any State or subdivision or municipality thereof. Neither Party waives, and expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

#### **DURATION/TERMINATION**

(L) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 90 days written notification to the other Party with such termination effective on the first day of the month after such 90 day notice period. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any TRT collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the date of termination.

#### **MISCELLANEOUS**

(M) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of Oregon without regard to its conflict of law principles.

(N) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(O) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(P) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party, in its original form or by electronic mail, facsimile or other electronic means. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures to this Agreement shall be legally binding with the same force and effect as manually executed signatures.

(Q) RELATIONSHIP OF THE PARTIES. The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise,

joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(R) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(S) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable hereunder) for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(T) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(U) MISCELLANEOUS. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

#### **NOTICES**

(V) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.  
Attn: General Counsel  
888 Brannan Street, 4<sup>th</sup> Fl.  
SF, CA 94103  
legal@airbnb.com

Airbnb, Inc.  
Attn: Global Head of Tax  
888 Brannan Street, 4<sup>th</sup> Fl.  
SF, CA 94103  
tax@airbnb.com

To the Taxing Jurisdiction:

\_\_\_\_\_  
City of Seaside, Oregon

\_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

*IN WITNESS WHEREOF*, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

**AIRBNB, INC.**, a Delaware corporation

By: \_\_\_\_\_  
Signature of Authorized Representative

**Beth Adair, Global Tax Director**  
Name and Title of Authorized Representative

City of Seaside, Oregon

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title

## LICENSE AGREEMENT

**AN AGREEMENT**, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, between the **City of Seaside, Oregon**, a municipal corporation of the State of Oregon, hereinafter referred to as "**City**", and **David Remer and Candace Remer**, husband and wife, hereinafter referred to as "**Remer**",

### CIRCUMSTANCES:

**City** is the owner of certain real Property in Clatsop County, Oregon, hereinafter referred to as the "**Property**", and more particularly described as:

See attached Exhibit "A", which is incorporated herein by reference.

**Remer** is the owner of certain real property in Clatsop County, Oregon, which abuts the real property described at Exhibit "A" above.

**Remer** desires to utilize their properties abutting **City's Property** and in doing so requires this License Agreement to provide ingress and egress and access to the **Remer** property for the purpose of placing in the **Remer** property a parking lot to benefit their business. See attached Exhibit "B" and Exhibit "C", which is incorporated herein by reference.

### NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES CONTAINED IN THIS AGREEMENT, IT IS AGREED AS FOLLOWS:

1. **City** grants permission to **Remer** and **Remer** accepts **City's** permission to the use of a portion of **City's Property** all at a more particularly described and set forth on Exhibit "A".
2. As indicated in Exhibit "C", it is to the benefit of **Remer** that they have access to

their property for the purpose of placing thereon a parking lot to complement their business. The benefit to the **City** is that the public generally shall have a free unimpeded and unrestricted access to any of the parking place improved by **Remer** on their property.

3. **Remer's** use of this **Property** shall not be "adverse" or contrary to **City's** interest in such **Property** in anyway.
4. Neither **Remer** nor any subsequent owner or occupant of that property owned by **Remer** shall acquire any prescriptive rights in the **City's Property**.
5. City may revoke its permission for **Remer's** continued use and occupation of **City's Property** for any reason in **City's** sole discretion upon Ninety (90) days prior written notice to **Remer**.
6. **Remer** shall forever defend, indemnify and hold **City** harmless from any and all claims, loss or liability arising out of or in any way connected with **Remer's** use of **City's Property**. In the event of any litigation or proceeding brought against **City** arising out of or in any way connected with any of the foregoing matters or claims, **Remer** shall, upon notice from **City**, vigorously resist and defend against such actions or proceedings through legal counsel reasonably satisfactory to **City**.
7. No modification, change, waiver or amendment of this License shall be deemed to be made unless in writing signed by all parties.
8. This License is the entire, final, and complete agreement of the parties and supersedes and replaces all written and oral agreements heretofore made or existing. **Remer's** further declare and represent that no promise, inducement or agreement not herein expressed has been made to them. This License contains the entire agreement hereto and the terms of this License are contractual and not

a mere recital.

9. The language of all parts of this License shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party.
10. Should any provision of this License be declared or determined to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be a part of the License.
11. The parties agree that the laws of the State of Oregon and no other state shall control or be used in construing the License and enforcing the rights and remedies of the parties.
12. The provisions, covenants, and agreements of this License shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and permissible assigns of the parties hereto.
13. In the event suit or action is instituted to enforce any of the terms of this License, the prevailing party shall be entitled to recover from the other party such sum as the Court may adjudge reasonable as attorney fees at trial or on appeal of such suit or action, in addition to all other sums provided by law.

**IN WITNESS WHEREOF**, the parties hereto have executed this License the day and year first above written, and by the notarization of their respective signatures.

CITY OF SEASIDE,  
A Municipal Corporation of the State of Oregon

By: \_\_\_\_\_  
**Mark Winstanley, City Manager**



\_\_\_\_\_  
**David Remer**

\_\_\_\_\_  
**Candace Remer**

STATE OF OREGON            )  
                                          )ss.  
County of Clatsop            )

This instrument was acknowledged before me on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2017, by **David Remer and Candace Remer**, husband and wife.

Before me: \_\_\_\_\_  
Notary Public for the State of Oregon

STATE OF OREGON        )  
                                  )ss.  
County of Clatsop        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared **Mark Winstanley**,  
who, being first duly sworn, did say that he, is the City Manager of CITY OF SEASIDE,  
a municipal corporation, and that this Agreement was signed in behalf of the City by  
authority of its City Council and acknowledged this Agreement to be its voluntary act  
and deed.

Before me: \_\_\_\_\_  
Notary Public for the State of Oregon

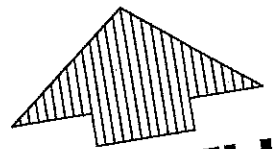
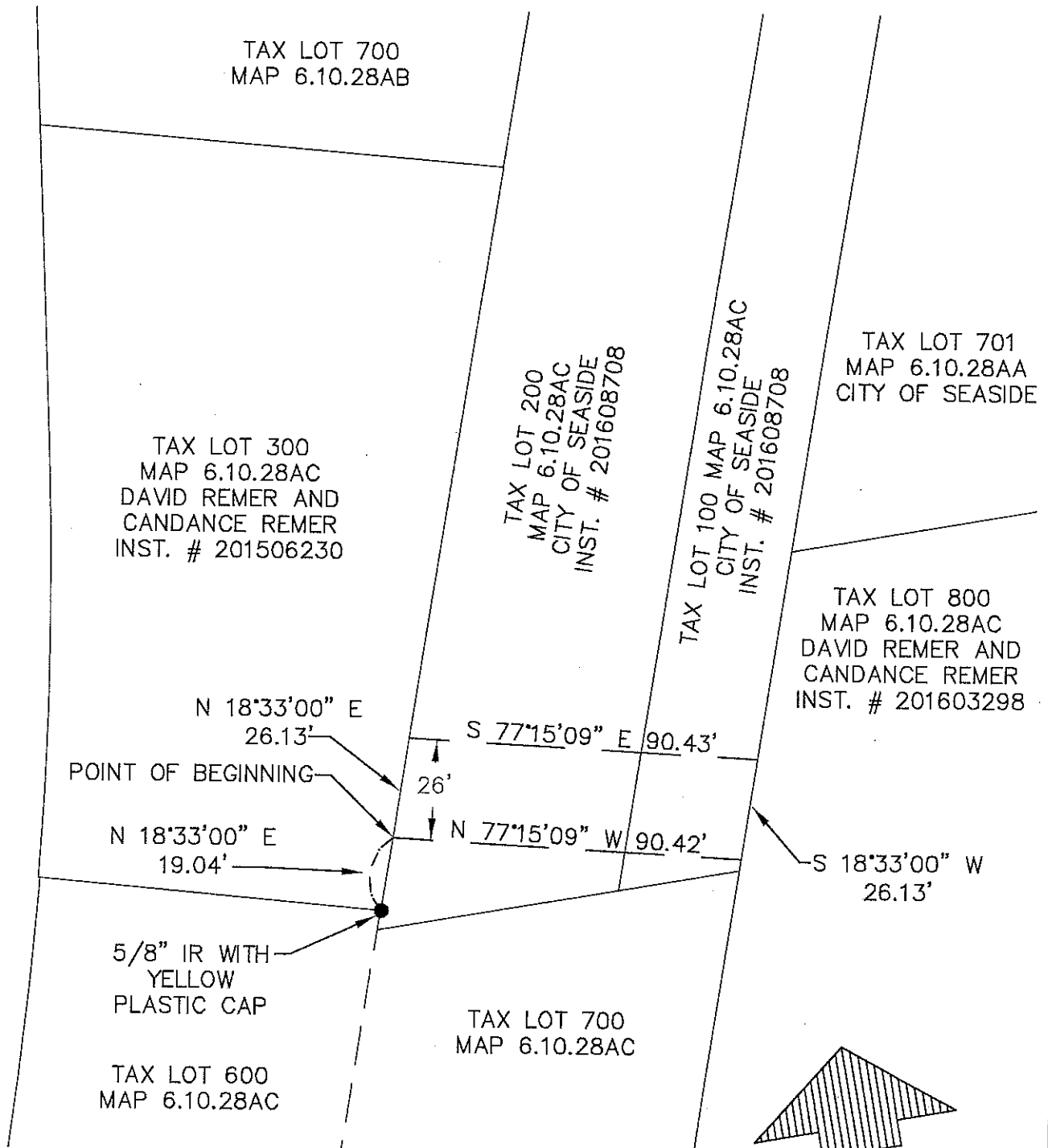
EXHIBIT "A"  
License Agreement Description

A License Agreement for David and Candace Remer across, through, on the surface and within the subsurface of a those properties described in Instrument Number 201608708, Deed Records, Clatsop County, Oregon, situated in the Northeast 1/4 of Section 28, Township 6 North, Range 10 West, Willamette Meridian, City of Seaside, Clatsop County, Oregon, as shown in the attached Exhibit "B" and more particularly described as follows:

**Commencing** at a 5/8" iron rod with a yellow plastic cap marked "HLB & ASSOC. INC." marking the Southeast corner of that tract described in Instrument Number 201506230, Clatsop County Deed Records, thence North 18°33'00" East, along the East line of said tract, a distance of 19.04 feet to the **Point of Beginning** of this description; thence North 18°33'00" East, continuing along said North line a distance of 26.13 feet; thence South 77°15'09" East 90.43 feet to the West line of that tract described in Instrument Number 201603298; thence South 18°33'00" West along said West line a distance of 26.13 feet to the Southeast corner of that tract described in Instrument Number 201608708; thence North 77°15'09" West 90.42 feet to the **Point of Beginning**.

EXHIBIT "B"  
LICENSE AGREEMENT MAP

US HIGHWAY 101

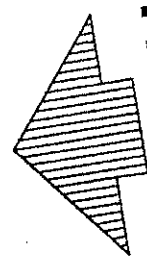
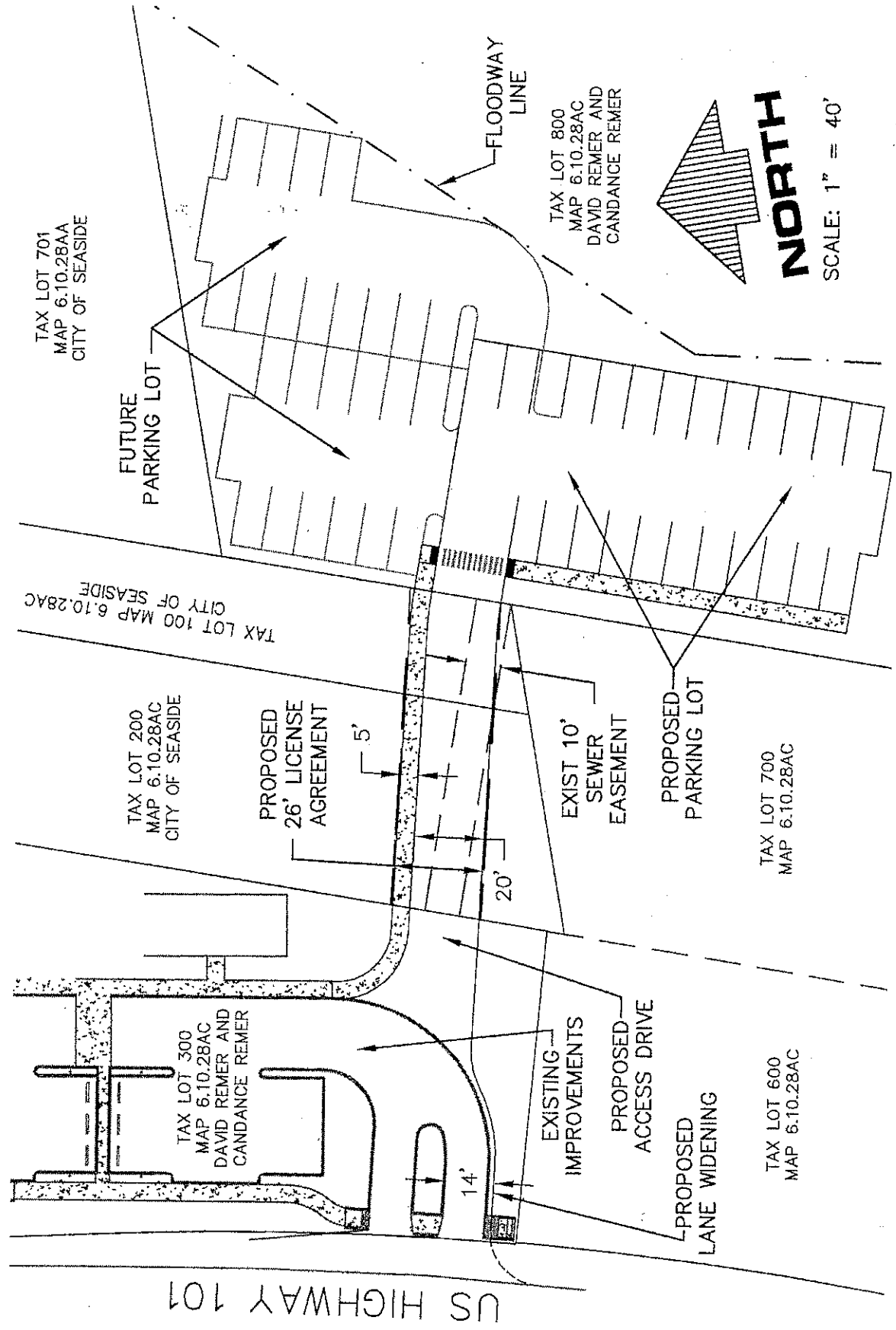


**NORTH**

SCALE: 1" = 40'

EXHIBIT "C"

PROPOSED SITE PLAN



NORTH

SCALE: 1" = 40'

**Mark Winstanley**

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**From:** Cameron Moore <cammoore@co.clatsop.or.us>  
**Sent:** Thursday, May 18, 2017 1:29 PM  
**To:** mwinstanley@cityofseaside.us  
**Subject:** Seaside Park Property

Dear Mark,

Thanks for your call regarding the land which Clatsop County sold to the City of Seaside in 2016. You are correct that this property was classified as "Park Land" prior to being sold to Seaside. It is my understanding that the City of Seaside is considering granting access through this property for a neighboring business that will use it solely for the purposes of accessing a parking lot owned by this business for use by its customers.

Clatsop County has no objections to the City of Seaside granting access through this property with understanding that the only improvement that will result is a "driveway" from the existing business to the parking lot. I hope this clarifies any questions or concerns that the City of Seaside has regarding the use of this property. Please let me know if you have additional questions or need additional clarification.

Cam

Cameron Moore  
Clatsop County Manager  
[cammoore@co.clatsop.or.us](mailto:cammoore@co.clatsop.or.us)  
503-338-3623

This message has been prepared on resources owned by Clatsop County, Oregon. It is subject to the Internet and Online Services Use Policy and Procedures of Clatsop County.



## MEMORANDUM

TO: Honorable Mayor & City Council  
FROM: Russ Vandenberg, General Manager  
DATE: May 12, 2017  
RE: SCCC Renovation / Addition - Architectural-Design

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As we continue to move forward with the SCCC Renovation / Addition Project, we are now in the phase of securing the Architectural Design and Engineering team.

We have reviewed and rated the following list of Architectural/Design submitted qualifications/proposals and would like to make the following recommendation:

HOLST + Convergence  
Steele Associates  
URBANADD

Staff is recommending HOLST + Convergence based on their exceptional qualifications and experience of convention center/Renovation-Addition projects.

Total cost of Architectural Design and Engineering is \$1,328,203.00



# AIA® Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Twenty Second day of May in the year Two Thousand Seventeen  
*(In words, indicate day, month and year.)*

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

City of Seaside  
989 Broadway  
Seaside, OR 97138

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

Holst Architecture, Inc.  
110 SE 8th Avenue  
Portland, OR 97214

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

Seaside Civic & Convention Center  
415 1st Avenue,  
Seaside, OR 97138

Renovation and Addition based on the visioning session held on April 3rd & 4th, 2017  
(see Exhibit C) and the assumed project schedule (see Exhibit D)

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

**TABLE OF ARTICLES**

- 1 INITIAL INFORMATION**
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- 6 COST OF THE WORK**
- 7 COPYRIGHTS AND LICENSES**
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- 11 COMPENSATION**
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- 13 SCOPE OF THE AGREEMENT**

**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.)*

**§ 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:

March 2018

- .2 Substantial Completion date:

March 2019

**§ 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 consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 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:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

- .1 General Liability  
\$4,000,000
- .2 Automobile Liability  
\$2,000,000
- .3 Workers' Compensation  
\$1,000,000
- .4 Professional Liability  
\$2,000,000

### 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. 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. 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 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 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.

### § 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. 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.

*(Paragraph Deleted)*

§ 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 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.

*(Paragraph Deleted)*

**§ 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.

#### **§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

**§ 3.4.1** 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 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; 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.

*(Paragraph Deleted)*

**§ 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 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 contracts for construction.

*(Paragraphs Deleted)*

##### **§ 3.5.3 NEGOTIATED PROPOSALS**

**§ 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 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 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.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.6.1.3** 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 Payment.

### **§ 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, 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. 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, 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 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 be liable for results of interpretations or decisions rendered in good faith. 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, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

Init.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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 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 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 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, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. 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 to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect 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 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 Change Orders and Construction Change Directives 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 shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner 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.

**§ 3.6.6.3** 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 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: (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.)*

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)	Architect	
§ 4.1.2 Multiple preliminary designs	Architect	
§ 4.1.3 Measured drawings	Architect	
§ 4.1.4 Existing facilities surveys	Architect	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™-2008)	Architect	
§ 4.1.7 Civil engineering	Architect	
§ 4.1.8 Landscape design	Architect	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	
§ 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	Not Provided	
§ 4.1.14	As-Designed Record drawings	Architect	
§ 4.1.15	As-Constructed Record drawings	Not Provided	
§ 4.1.16	Post occupancy evaluation	Architect	
§ 4.1.17	Facility Support Services (B210™-2007)	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	
§ 4.1.21	Security Evaluation and Planning (B206™-2007)	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	

§ 4.2 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 submittal out of sequence from the submittal schedule agreed to by the Architect;
2. Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
3. Preparing Change Orders and Construction Change Directives that require evaluation of 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 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.

**§ 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
2. Twenty-Five ( 25 ) visits to the site by the Architect over the duration of the Project during construction
3. Two ( 2 ) 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. Two ( 2 ) 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 Two ( 2 ) 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 subsoil conditions, with written reports and appropriate recommendations.

§ 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 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. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the 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 to provide the Architect access to the Work wherever it is in preparation or progress.

#### ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the

estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

**§ 6.4** If the Bidding 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 to reflect changes in the general level of prices in the applicable construction market.

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

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

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

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

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

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

**§ 7.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of

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User Notes:

(3B9ADA28)

the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. 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.

### **§ 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.)*

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

### **§ 8.3 ARBITRATION**

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

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

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

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

### **§ 8.3.4 CONSOLIDATION OR JOINDER**

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

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

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

### **ARTICLE 9 TERMINATION OR SUSPENSION**

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

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

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

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

**§ 9.4** Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

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

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

**§ 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 11.9.

#### **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.

**§ 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.

**§ 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.

**§ 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 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.)*

\$1,328,203 (one million, three hundred twenty-eight thousand, two hundred and three dollars). See Exhibit A for full team fee backup.

§ 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.)*

§ 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.)*

§ 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 . percent ( %), or as otherwise stated below:

*(Paragraph Deleted)*

*(Table Deleted)*

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

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

See Exhibit B 2017\_Holst Hourly Rate Schedule, Exhibit F- Proposal\_Structural, Exhibit G- Proposal\_Civil, Exhibit H- Proposal MEP

*(Table Deleted)*

## § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .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 Ten percent ( 10 %) of the expenses incurred.

## § 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

## § 11.10 PAYMENTS TO THE ARCHITECT

*(Paragraph Deleted)*

§ 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.)*

One and a Half % 1.5

§ 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.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

**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

*(Paragraph Deleted)*

- .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 - Fees
- Exhibit B - Hourly Rates
- Exhibit C - Visioning Session Summary
- Exhibit D - Schedule
- Exhibit E - Proposal Architectural
- Exhibit F - Proposal Structural
- Exhibit G - Proposal Civil
- Exhibit H - Proposal MEP

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

**OWNER**

**ARCHITECT**

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

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

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

\_\_\_\_\_  
David Otte Partner

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



# **Additions and Deletions Report for AIA® Document B101™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:52:24 on 05/15/2017.

## **PAGE 1**

**AGREEMENT** made as of the Twenty Second day of May in the year Two Thousand Seventeen

...

City of Seaside  
989 Broadway  
Seaside, OR 97138

...

Holst Architecture, Inc.  
110 SE 8th Avenue  
Portland, OR 97214

...

Seaside Civic & Convention Center  
415 1st Avenue  
Seaside, OR 97138

Renovation and Addition based on the visioning session held on April 3rd & 4th, 2017 (see Exhibit C) and the assumed project schedule (see Exhibit D)

## **PAGE 2**

March 2018

...

March 2019

## **PAGE 3**

\$4,000,000

...

\$2,000,000

...

\$1,000,000

...

\$2,000,000

**PAGE 4**

~~§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.~~

**PAGE 5**

~~§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.~~

...

~~§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.~~

...

**§ 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;~~

...

~~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.  
 ...

~~§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~

PAGE 9

§ 4.1.1 Programming (B202™-2009)	Architect	
§ 4.1.2 Multiple preliminary designs	Architect	
§ 4.1.3 Measured drawings	Architect	
§ 4.1.4 Existing facilities surveys	Architect	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building Information Modeling (E202™-2008)	Architect	
§ 4.1.7 Civil engineering	Architect	
§ 4.1.8 Landscape design	Architect	
§ 4.1.9 Architectural Interior Design (B252™-2007)	Architect	
§ 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	Not Provided	
§ 4.1.14 As-Designed Record drawings	Architect	
§ 4.1.15 As-Constructed Record drawings	Not Provided	
§ 4.1.16 Post occupancy evaluation	Architect	
§ 4.1.17 Facility Support Services (B210™-2007)	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	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	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	

PAGE 10

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

.2 Twenty-Five (25) visits to the site by the Architect over the duration of the Project during construction

...  
3 Two ( 2 ) 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 Two ( 2 ) 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 Two ( 2 ) 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.

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Arbitration pursuant to Section 8.3 of this Agreement

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\$1,328,203 (one million, three hundred twenty-eight thousand, two hundred and three dollars). See Exhibit A for full team fee backup.

...  
§ 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:

...

Schematic Design Phase	percent (	%)
Design Development Phase	percent (	%)
Construction	percent (	%)
Documents Phase	percent (	%)
Bidding or Negotiation Phase	percent (	%)
Construction Phase	percent (	%)
<hr/>		
Total Basic Compensation	one hundred percent (	100 %)

...

See Exhibit B 2017 Holst Hourly Rate Schedule, Exhibit F- Proposal Structural, Exhibit G- Proposal Civil, Exhibit H- Proposal MEP

...  
Employee or Category

Rate

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10 %) of the expenses incurred.

...

~~§ 11.10.1 An initial payment of (\$ ) 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.

...

One and a Half % 1.5

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

...

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

...

Exhibit A - Fees

...

Exhibit B - Hourly Rates

...

Exhibit C - Visioning Session Summary

...

Exhibit D - Schedule

...

Exhibit E - Proposal Architectural

...

Exhibit F - Proposal Structural

...

Exhibit G - Proposal Civil

Exhibit H – Proposal MEP

David Otte Partner

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Dave Otte, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:52:24 on 05/15/2017 under Order No. 0403878687 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 those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*