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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 15 Ordinance/Resolution# 08-09-519 Council District: 3

For Meeting of August 3, 2009

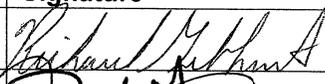
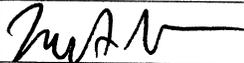
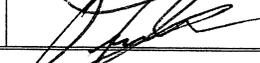
(Adoption Date)

**TITLE:**

**A RESOLUTION AWARDING A CONTRACT FOR THE DESIGN OF THE REGIONAL RECREATION AND AQUATIC CENTER PHASE II – KNOWN AS THE NATATORIUM – PROJECT NUMBER 08-09-519, TO ASA ARCHITECTS, P.A., OF LAS CRUCES, NEW MEXICO, IN THE AMOUNT OF \$323,848.00; PLUS NM GROSS RECEIPTS TAX OF \$24,086.20; PLUS AUTHORIZING A CITY MANAGER CONTINGENCY OF \$32,385.00; FOR A TOTAL PROJECT AUTHORIZATION OF \$380,319.20.**

**PURPOSE(S) OF ACTION:**

To award a design contract for the new Natatorium

<b>Name of Drafter:</b> D. Eric Martin 		<b>Department:</b> Facilities/Project Mgmt.		<b>Phone:</b> 541-2616	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Facilities Department		541-2651	Budget		2300
			Assistant City Manager		2271
Legal		2126	City Manager		2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In 2008, the New Mexico Legislature authorized \$594,000.00, in Severance Tax Bond Funds to plan, design, equip, furnish, and construct the Regional Recreation and Aquatic Center swimming pool. As part of this grant, one percent of the allocation is being withheld for Arts in Public Places. This grant expires June 30, 2012.

Phase I-A of the Regional Recreation and Aquatic Center is currently under construction. Funded amenities include a therapeutic pool, indoor recreation pool, lap swim area, lazy river, water slide, and other aquatic amenities. A second floor is being "shelled out" so that additional recreational amenities such as an exercise room can be completed at a later date. Phase's I-B and I-C include additional recreational amenities such as the exercise room, running track, multi-activity court(s), etc.

Based on input from stakeholders, legislators, and City Council, there has been support for a Phase II, which would yield design and construction of a Natatorium (competitive pool venue). Given the estimated cost of \$7.5 million to construct the facility, the

(Continue on additional sheets as required)

authorized funding is sufficient to start the design services process. Depending on the actual proposed design, and updated construction cost, services through construction documents may be suspended until construction funds are identified; i.e., services may proceed up through conceptual and schematic design only. This would yield documentation that could be used to help promote the project to obtain future funding.

A request for proposals was developed and advertised earlier this year. Several proposals were received and evaluated by the Selection Advisory Committee (SAC). Based on the evaluation scores, ASA Architects, P.A., was the highest ranked proposer. City staff has recently concluded successful negotiations with the proposed firm.

### **SUPPORT INFORMATION:**

1. Resolution
2. Exhibit A – Purchasing Manager’s Request to Contract Form
3. Exhibit B – Selection Advisory Committee Score Sheets
4. Attachment – Draft Contract

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
NM Severance Tax Bond – 2008 4012-40803170-852100-60P05	\$380,319.20	\$588,060.00

### **OPTIONS / ALTERNATIVES:**

1. Vote “YES” on the Resolution; thereby, authorizing staff to contract with ASA Architects, P.A. for design of the Regional Recreation and Aquatics Center Phase II. This would allow expenditure of the grant funds to occur in a timely manner.
2. Vote “NO” on the Resolution; thereby, directing staff not to contract with ASA Architects, P.A. for design of the Regional Recreation and Aquatics Center Phase II. This would delay timely expenditure of the grant funds.
3. Vote “AMEND” on the Resolution; thereby, providing direction to staff on how to proceed with this project. This may delay timely expenditure of the grant funds.

(Continue on additional sheets as required)

**RESOLUTION NO. 08-09-519**

**A RESOLUTION AWARDING A CONTRACT FOR THE DESIGN OF THE REGIONAL RECREATION AND AQUATIC CENTER PHASE II – KNOWN AS THE NATATORIUM – PROJECT NUMBER 08-09-519, TO ASA ARCHITECTS, P.A., OF LAS CRUCES, NEW MEXICO, IN THE AMOUNT OF \$323,848.00; PLUS NM GROSS RECEIPTS TAX OF \$24,086.20; PLUS AUTHORIZING A CITY MANAGER CONTINGENCY OF \$32,385.00; FOR A TOTAL PROJECT AUTHORIZATION OF \$380,319.20.**

The City Council is informed that:

**WHEREAS**, in 2008, the NM State Legislature authorized \$594,000.00 to plan, design, equip, furnish, and construct the regional recreation and aquatics center swimming pool; and

**WHEREAS**, Phase I-A is currently under construction and consists of a therapeutic pool, indoor recreation pool, lap swim area, lazy river, water slide, and other amenities; and

**WHEREAS**, stakeholders, legislators, and City Council have expressed support for a competitive pool venue; and

**WHEREAS**, Phase II – known as the Natatorium – is intended to be such a venue; and

**WHEREAS**, the funding provided is sufficient to start the design process for a competitive pool complex; and

**WHEREAS**, several proposals were received and reviewed by the Selection Advisory Committee (SAC); and

**WHEREAS**, the highest ranked proposal was from ASA Architects, P.A. and City Staff were directed to proceed with contract negotiations with that firm, and upon successful negotiations, to recommend award.

**NOW, THEREFORE**, Be it resolved by the governing body of the City of Las Cruces, New Mexico:

(I)

THAT the contract for the design of Phase II of the Regional Recreation and Aquatic Center – Natatorium – is hereby awarded to ASA Architects, P.A. of Las Cruces, NM, in the amount of \$323,848.00; plus, New Mexico Gross Receipts Tax of \$24,086.20; plus, a City Manager contingency of \$32,385.00; for, a total contract authorization of \$380,319.20.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE and APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk  
(SEAL)

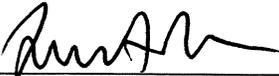
VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Silva: \_\_\_\_\_  
Councillor Connor: \_\_\_\_\_  
Councillor Archuleta: \_\_\_\_\_  
Councillor Small: \_\_\_\_\_  
Councillor Jones: \_\_\_\_\_  
Councillor Thomas: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

# CITY OF LAS CRUCES

## PURCHASING MANAGER'S REQUEST TO CONTRACT

For Meeting of: August 3, 2009

Resolution No.: 08-09-519

### Contract Purchase For The Regional Recreation and Aquatic Center Phase II

The Las Cruces City Council is provided the following information concerning this request:

#### RFP SOLICITATION INFORMATION:

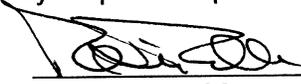
1. RFP No./ Due Date: RFP No. 08-09-519/February 13, 2009
2. Description: The Regional Recreational and Aquatic Center Phase II
3. Using Department: Facilities/Project Management
4. Number of Responses: Ten (10)
5. Award Recommendation To: ASA Architects, P.A., of Las Cruces, New Mexico
6. Total Award Amount (including any tax and contingency): \$380,440.64
7. Contract Duration: 36 Months

#### LOCAL PREFERENCE FACTOR

Local Preference	No		LCMC §24-100 not applicable to this solicitation
Factor Applied Per	Yes		Made A Difference To Awards(s)
LCMC §24-100		X	Made No Difference To Bid Award(s)

#### PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to purchase is hereby requested pursuant to Section 24-92.

  
Purchasing Manager

17/17/09  
Date

#### CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION or PURCHASE ORDER NUMBER:	10100440
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# DRAFT AIA® Document B102™ - 2007

## Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

AGREEMENT made as of the **Eighth** day of **June** in the year **Two Thousand Nine**  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, address and other information)

City of Las Cruces  
200 N. Church St.  
Las Cruces, New Mexico 88001  
Telephone Number: 505-  
Fax Number: 505-

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

ASA Architects, P.A.  
PO Box 146  
Las Cruces, NM 88004  
Telephone Number: (575) 526-3111  
Fax Number: (575) 523-9667

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

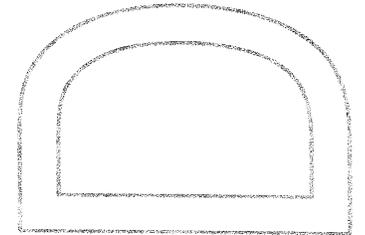
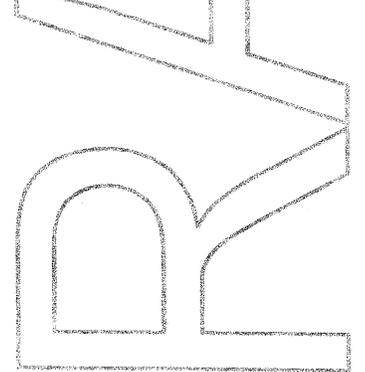
Regional Recreation and Aquatic Center - Phase II  
Corner of Solano and Hadley, adjacent, or in close proximity, to Phase I

The Owner and Architect agree as follows.



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

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



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TABLE OF ARTICLES

- 1 ARCHITECT'S RESPONSIBILITIES
- 2 OWNER'S RESPONSIBILITIES
- 3 COPYRIGHTS AND LICENSES
- 4 CLAIMS AND DISPUTES
- 5 TERMINATION OR SUSPENSION
- 6 COMPENSATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SPECIAL TERMS AND CONDITIONS
- 9 SCOPE OF THE AGREEMENT

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The Architect shall provide the following professional services:

*(Describe the scope of the Architect's services or identify an exhibit or scope of services document setting forth the Architect's services and incorporated into this document in Section 9.2)*

As described in attached AIA Document B201-2007, Standard Form of Architect's Services dated June 10, 2009.

§ 1.2 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.

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

§ 1.4 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.

§ 1.5 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

See attached Certificates of Insurance.

- .2 Automobile Liability

See attached Certificates of Insurance.

- .3 Workers' Compensation

See attached Certificates of Insurance.

## .4 Professional Liability

**See attached Certificates of Insurance.**

**ARTICLE 2 OWNER'S RESPONSIBILITIES**

§ 2.1 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.

§ 2.2 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.

§ 2.3 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 consulting 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.

§ 2.4 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.

§ 2.5 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.

**ARTICLE 3 COPYRIGHTS AND LICENSES**

§ 3.1 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.

§ 3.2 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.

§ 3.3 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 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 for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 5.3 and 5.4, the license granted in this Section 3.3 shall terminate.

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

of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1.

**§ 3.4** Except for the licenses granted in this Article 3, 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 4 CLAIMS AND DISPUTES**

**§ 4.1 GENERAL**

**§ 4.1.1** 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 4.1.1.

**§ 4.1.2** 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, if applicable. 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.

**§ 4.1.3** 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 5.7.

**§ 4.2 MEDIATION**

**§ 4.2.1** 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.

**§ 4.2.2** 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.

**§ 4.2.3** 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.

**§ 4.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 4.2, 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 4.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

### § 4.3 ARBITRATION

§ 4.3.1 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.

§ 4.3.1.1 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.

§ 4.3.2 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.

§ 4.3.3 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.

### § 4.3.4 CONSOLIDATION OR JOINDER

§ 4.3.4.1 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).

§ 4.3.4.2 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.

§ 4.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 4.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

## ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 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.

§ 5.2 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.

§ 5.3 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.

§ 5.4 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.

§ 5.5 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.

§ 5.6 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 5.7.

§ 5.7 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.

§ 5.8 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 3 and Section 6.3.

#### ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.  
(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

For basic services as described in AIA B201-2007, compensation through 30% Construction Documents shall be \$323,848.00. See Cost Matrix Attachment for phases of delivered services.

§ 6.2 Reimbursable Expenses are in addition to compensation for the Architect's professional 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.

§ 6.2.1 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus an administrative fee of **One percent ( 1.00% )** of the expenses incurred.

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

If the Owner terminates the Architect for its convenience under Section 5.5, or the Architect terminates this Agreement under Section 5.3, 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 the Project as follows:

To be determined based on the client's desired use of documents with fee amount to be by mutual agreement.

**§ 6.4 PAYMENTS TO THE ARCHITECT**

**§ 6.4.1** An initial payment of ~~Zero Dollars and Zero Cents~~ (\$ ~~0.00~~ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 6.4.2** 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 ~~Sixty~~ ( ~~60~~ ) 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.)

~~12.00% per annum~~

**§ 6.4.3** 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.

**§ 6.4.4** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** 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 4.3.

**§ 7.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 7.3** 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.

**§ 7.4** 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.

**§ 7.5** 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.

**§ 7.6** 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.

**§ 7.7** 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.

**§ 7.8** 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 8 SPECIAL TERMS AND CONDITIONS**

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

**ARTICLE 9 SCOPE OF THE AGREEMENT**

§ 9.1 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.

§ 9.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B102-2007, Standard Form Agreement Between Owner and Architect
- .2 Other documents:

*(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)*

AIA Document B201-2007, Standard Form of Architect's Services  
 Cost Matrix  
 Original RFP 08-09-519 and related addenda dated February 18, 2009, by reference  
 Proposal submitted by ASA Architects dated February 25, 2009, by reference

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

**OWNER**

**ARCHITECT**

*(Signature)*

*(Signature)*

*(Printed name and title)*

Ted E. Shelton, Jr., AIA, President

*(Printed name and title)*