



ALISBERG PARKER



## Katahdin Woods and Waters National Monument Visitor Contact Station

### ADDENDUM AND RESTATEMENT OF ARCHITECT OF RECORD CONTRACT BETWEEN ALISBERG PARKER ARCHITECTS LLC AND ELLIOTSVILLE FOUNDATION, INC. AND EPI MONUMENTS PROJECTS, L3C

**April 21, 2021**

This addendum to the existing contract between Alisberg Parker Architects and EPI Monument Projects, L3C, a subsidiary of Elliotsville Foundation, Inc., adds new terms and conditions to the original Architect of Record contract from April 1, 2020 and includes the following documents as Attachments:

- A. Architect of Record Contract for Katahdin Woods and Waters Visitor Contact Station amended April 21, 2021
- B. April 21, 2021 Updated Owner's Terms and Conditions
- C. Memorandum of Agreement between EFI and Wabanaki Advisory Board (aka Wabanaki Council)

This Addendum Agreement restates the Architect of Record contract entered into April 1, 2020.

**Elliotsville Foundation, Inc./EPI Monument  
Projects, L3C**

*(Signature)*

Lucas St. Clair, Executive Director  
Elliotsville Foundation, Inc., and EPI  
Monument Projects, L3C

**Alisberg Parker Architects LLC**

*(Signature)*

S. Edward Parker, Architect  
Alisberg Parker Architects LLC

# BASED ON AIA DOCUMENT B101™ - 2007

## STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT

**AGREEMENT** in effect as of the 1st day of April in the year **Two Thousand Twenty** (In words, indicate day, month and year.) Amended as of April 21 in the year Two Thousand Twenty-One

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

Lucas St. Clair, Executive Director  
Elliotsville Foundation, Inc./EPI Monument Projects, L3C  
P.O. Box 148  
Portland, ME 04112-0148

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

Alisberg Parker Architects LLC  
222 Sound Beach Ave.  
Old Greenwich, CT 06870

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

Visitor Contact Station at Katahdin Woods and Waters National Monument in Maine  
Attachment TBA: Final Schematic Design and Site Plan

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

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

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

- Schematic Design by Saunders Architecture (TBA)
- EPI Monument Projects, L3C Standard Terms and Conditions
- Project Location
- Project Schedule
- Construction Team Roster
- Sample Waiver and Lien Releases

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§ 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:

April 2021

.2 Substantial Completion date:

October 2022

§ 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.

**§ 2.2.1 Notwithstanding any provisions to the contrary, the Architect shall perform its services in accordance with the commitments contained in the Memorandum of Understanding between the Wabanaki Advisory Board and Elliottville Foundation, Inc. dated January 24, 2021, regarding Wabanaki cultural knowledge and intellectual property (referred to hereafter as "ICIP" or "Indigenous Cultural and Intellectual Property"). Specifically, the Architect agrees any Wabanaki ICIP shared within this Project is owned by the Wabanaki Nations represented by the Wabanaki Advisory Board.**

**§ 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 – through October 2023 (the latest time of a meeting with the Owner to review the facility operations and performance, based on anticipated date of substantial completion – as provided in Section 3.6.6.5). If any of the requirements set forth below exceed the types and limits the Architect normally maintains, EPI Monument Projects, L3C shall reimburse the Architect for any additional cost above \$5000:

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

**.1** General Liability

One Million Dollars and Zero Cents (\$1,000,000.00) for each occurrence and \$2,000,000.00 per annum in the aggregate for bodily injury and property damage

**.2** Automobile Liability

Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) per incident combined single limit and aggregate for bodily injury and property damage

**.3** Workers' Compensation

One Hundred Thousand Dollars and Zero Cents (\$100,000.00 )

**.4** Professional Liability

Three Million Dollars and Zero Cents (\$ 3,000,000.00) per claim and in the aggregate

## 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 coordination of 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 and Design Architect (Todd Saunders), 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, the Design Architect, 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, Design Architect, 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** The Architect understands the Owner's project schedule and the absolute completion date of August 1, 2023.

**§ 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.

**§ 3.1.7 The Architect shall obtain approval from the Owner for the use and representation of any Wabanaki ICIP.**

### **§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES**

**§ 3.3.1** Based on the Owner's approval of the Design Architect's 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 and Design Architect's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.3.2 The Architect shall incorporate into Design Development Documents proper and appropriate acknowledgement and attribution to the Wabanaki Nations and Wabanaki individuals of any reference that draws from and/or embodies Wabanaki cultural knowledge and/or intellectual property contributed to the Work.**

**§ 3.3.32** The Architect shall work with the project construction manager to update the estimate of the Cost of the Work.

**§ 3.3.43** The Architect shall submit the Design Development Documents to the Owner and Design Architect, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's and Design Architect's written approval, subject to Owner's Terms & Conditions 4.c.

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

**§ 3.4.1** Based on the Owner's and Design Architect'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 and Design Architect's written 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 Construction Manager 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 The Architect shall incorporate into Construction Documents proper and appropriate acknowledgement and attribution to the Wabanaki Nations and Wabanaki individuals of any reference that draws from and/or embodies Wabanaki cultural knowledge and/or intellectual property contributed to the Work.**

**§ 3.4.43** During the development of the Construction Documents, the Architect shall assist the Owner and Construction Manager 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 Construction Manager; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

**§ 3.4.5** The Architect shall submit the Construction Documents to the Owner and Design Architect, advise the Owner and Design Architect 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 and Design Architect's written approval.

### **§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

#### **§ 3.5.1 GENERAL**

The Architect shall work with the Owner's Construction Manager in establishing a list of prospective contractors. Following the Owner's and Design Architect's approval of the Construction Documents, the Architect shall assist the Owner, Design Architect, and the Owner's Construction Manager 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) with approval of Owner and Design Architect, awarding and preparing contracts for construction.

#### **§ 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 work with the Construction Manager to obtain 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 participating in selection of prospective subcontractors with the Construction Manager; and
- .3 participating in negotiations with prospective subcontractors, if needed and required by the Construction Manager.

**§ 3.5.3.3** The Architect, in consultation with the Design 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 Construction Manager ("CM") as set forth below.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner and Design Architect during the Construction Phase Services and in evaluating the contractor provided budgeting for the project. The Architect shall have authority to act on behalf of the Owner and Design Architect 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 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 CM 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 and Design Architect reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Design Architect (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the CM, 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 CM. 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 the Design Architect 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 CM, 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 Construction Documents and approved the Design Architect.

**§ 3.6.2.5** Unless the Owner and CM 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 CM as provided in the Contract Documents.

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

**§ 3.6.3.1** The Architect shall review and certify the amounts due the CM 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 CM'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 CM's right to payment, or (4) ascertained how or for what purpose the CM 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.

**§ 3.6.3.4** Prior to release of Certificates for Payment, Architect shall receive lien releases from the CM and "subcontractors" from the previous months' payment.

### **§ 3.6.4 SUBMITTALS**

**§ 3.6.4.1** The Architect shall review the CM'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 and Design Architect shall review and approve or take other appropriate action upon the CM'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 CM'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 CM 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 and Design Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the CM 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 CM 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 and Design Architect'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 CM 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 CM; 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 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 CM of Work to be completed or corrected. The Architect's final inspection shall be conducted with the Owner.

**§ 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 CM, 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 CM: (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 CM 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, (anticipated to be October 2022), 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.)*

<b>Additional Services</b>	<b>Responsibility (Architect, Owner or Not Provided)</b>	<b>Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)</b>
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§ 4.1.1 Civil engineering	Owner	
§ 4.1.2 Landscape design	Owner	
§ 4.1.3 Architectural Interior Design (B252™–2007)	Owner	
§ 4.1.4 Value Analysis (B204™–2007)	Owner	
§ 4.1.5 Detailed cost estimating	NP	
§ 4.1.6 On-site project representation	NP	
§ 4.1.7 As-Constructed Record drawings (to be included at additional cost)	Architect	One day on-site with 2 people
§ 4.1.8 Post occupancy evaluation	NP	
§ 4.1.9 Facility Support Services (B210™–2007)	NP	
§ 4.1.10 Tenant-related services	NP	
§ 4.1.11 Telecommunications/data design	Owner	
§ 4.1.12 Security Evaluation and Planning (B206™–2007)	NP	
§ 4.1.13 Commissioning (B211™–2007)	NP	
§ 4.1.14 LEED® Certification (B214™–2007)	NP	
§ 4.1.15 Fast-track design services	NP	
§ 4.1.16 Historic Preservation (B205™–2007)	NP	
§ 4.1.17 Furniture, Furnishings, and Equipment Design (B253™–2007)	NP	

**§ 4.2** 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.

**§ 4.2.1** 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 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .8 Locating, vetting or evaluating bidders providing proposals, except upon request of CM, evaluation of the qualifications of final bidders or persons providing proposals requested by the CM will not be considered an additional service; or
- .9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

**§ 4.2.2** The Architect shall provide Construction Phase Services as needed, such services to be included in the Basic Services. The Architect shall schedule, and attend, regularly scheduled status conferences with the Owner, Design Architect and the CM not less frequently than once per week during the Construction Phase. Meetings exceeding the limits set forth below shall be considered Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 2 reviews of each Shop Drawing, Product Data item, sample and similar submittal of the CM
- .2 30 visits to the site or bi-monthly by the Architect over the duration of the Project during construction

**§ 4.2.3** If the services covered by this Agreement cannot be completed by August 1, 2023, through no fault of the Architect, the parties agree to good faith negotiation regarding any potential extension of the Architect's services and compensation beyond that time.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner or Owner's consultants shall provide information in a timely manner regarding requirements for and limitations on the Project, including written records, drawings or depictions 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.

**§ 5.1.1** 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.

**§ 5.1.2 Owner shall ensure any Instrument of Service or work product produced by the Architect is in strict compliance with the commitments of the Memorandum of Understanding (“MOU”) between the Wabanaki Advisory Board and Elliotsville Foundation, Inc., as agreed to on January 24, 2021.**

**§ 5.1.3 As identified by the Owner, the Architect shall consult with representative(s) of the Wabanaki Advisory Board with regard to any potential reference that draws from and/or embodies Wabanaki ICIP in the Work.**

**§ 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, Architect, and Design 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 CM 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 CM, 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 CM 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 CM's 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 CM'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 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 and Design Architect 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.

**§ 6.5** 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 and Design 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.

**§ 6.6** If the Owner chooses to proceed under Section 6.5.4, 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. Architect acknowledges that the copyright in all materials produced by Design Architect (Saunders Architecture) shall remain vested in Saunders, except where there are references that draw from and/or embody Wabanaki ICIP. Such ICIP is owned by the Wabanaki Nations, currently represented by the Wabanaki Advisory Board. 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 CM, 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, construction, use, maintenance, alteration or additions to 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. Architect agrees that Owner's rights and license under this section may be transferred to the National Park Foundation or National Park Service.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 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, with the exception of the National Park Foundation or the National Park Service, 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**

Claim disputes as per EPI Monument Projects, L3C Standard Terms and Conditions.

## **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. In the event of termination, fees will be settled based on work completed to the date of termination, according to the percentages pertaining to each phase of work below.

Design Development Phase	30% of total fee
Construction Documents Phase	40% of total fee
Bidding or Negotiation Phase	5% of total fee
Construction Phase	25% of total fee

**§ 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** In order to determine common understandings should differing interpretations arise, the parties agree to consult Terms as defined in AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 10.3** Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may:

10.3.1 Assign this Agreement in whole or in part to the National Park Foundation or National Park Service.

10.3.2 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 7 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 7 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 within Owner's reserved rights 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.)*

For budgeting, the construction cost of the project is estimated at \$X. The Architect's fee is 10% of this budgeted value or \$X. The Architect's fee shall be adjusted to reflect the percentages of the actual construction cost when GMP is agreed upon with CM and at the close of the project. Basic services included in the percentage fee include Design Development, Construction Documents, Bidding and Negotiating, and Construction Administration. The fee shall be paid in 40 installments of \$X/month (to be adjusted per the above) commencing May 2020 and concluding August 2023.

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(See 11.7.)*

As Constructed Record Drawings (see 4.1.7) to be billed at \$7,600 when Additional Service is complete.

**§ 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 Ten percent (10.00 %), or as otherwise stated below:

**§ 11.5** Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Construction Phase work includes all coordination drafting, virtual meetings required as outlined in Section 3-6. Site visits over the allotted 30 visits 4.3.3.2 are considered an additional service and are billed at \$X per visit for Project Architect and \$X per visit for Partner.

**§ 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, such adjustment subject to Owner's prior agreement.

Employee or Category	Rate
Partner	\$X/hr.
Project Architect	\$X/hr.
Draftsperson/Junior Designer	\$X/hr.

### **§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

**§ 11.8.1** All Reimbursable Expenses are to be approved by the Owner. 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 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .7 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;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .9 Site office expenses; and
- .10 Other similar Project-related expenditures as approved by Owner.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10.00 %) 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 may retain the use of the instruments of service after termination if the Owner has paid the Architect in full for services rendered and signs a legal agreement to hold the Architect harmless for any and all claims that may arise as the project proceeds.

### **§ 11.10 PAYMENTS TO THE ARCHITECT**

**§ 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 the Architect 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:  
None.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 EPI Monument Projects, L3C Terms and Conditions and this Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

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

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:

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

In the event of any conflict between this document B101-207 and the Owner's Updated Terms and Conditions based on the MOU with the Wabanaki Board as set forth in Exhibit A, the Owner's Terms and Conditions shall prevail with the exception of provision 2.5 of this document which shall prevail.

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

OWNER

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*(Signature)*  
Lucas St. Clair  
Executive Director, EPI Monument Projects, L3C  
*(Printed name and title)*

ARCHITECT

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*(Signature)*  
S. Edward Parker, as Manager  
*(Printed name and title)*



EPI Monument Projects, L3C  
Standard Terms & Conditions  
4/21/21

EPI Monument Projects, L3C is a wholly owned subsidiary of Elliotsville Foundation, Inc. (EFI) and is the entity responsible (Owner) for development and construction of a visitor contact station, site, and accessways and their interpretation in Katahdin Woods and Waters National Monument (collectively "the Projects" – see Attachment 1 – Projects Map). The Projects are being executed in consultation with the National Park Service (NPS) under the Owner's Reserved Rights as cited in deeds transferring the Monument lands to the United States of America. The Projects include a formal understanding between EFI and the Wabanaki Advisory Board (Wabanaki Board) regarding the sharing and subsequent use of Wabanaki cultural knowledge and intellectual property during development of the design, interpretation, promotion and fundraising for the projects (Memorandum of Understanding Attached).

Final completion of the Projects will be no later than August 1, 2023. The completed Projects will be offered for donation to NPS no later than August 12, 2023 (Attachment 2 – Projects Timeline), barring conditions beyond Owner's control necessitating an extension.

The following Terms & Conditions (T&C) shall apply to all contractors (architects, engineers, consultants, and others) engaged in the work of EPI Monument Projects, L3C. In the event of a conflict between Owner's T&C and any terms of a proposed Agreement, Owner's T&C will be presumed to govern. Contractors understand and agree that Owner's rights and licenses under this agreement may be transferred to the National Park Foundation or National Park Service.

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1. Scope of Work

Contractor will provide a proposed Agreement with clearly defined Scopes of Work and Specifications, Schedule of Deliverables, Timing including dates of commencement and dates of completion, Pricing, Proposed Expense Reimbursements, and Schedule of Payments. Acceptance and authorization to begin work to be provided by Owner.

2. Schedule

Work will be performed and completed by Contractor according to schedule, understanding that time is of the essence with regard to completion of the work in accordance with the Agreement.

- a. Schedules will be assessed and updated periodically.
- b. Changes to the scope, deliverables, timing or pricing are to be agreed upon in advance in writing by the parties.
- c. Completion of work will be considered satisfactory based on meeting specifications per the Agreement, generally accepted industry standards, and judgment of the Architect of Record.

3. Payment

- a. Monthly invoices to be provided by Contractor with either time and task record or with set installments, as defined in the Agreement, and expense amounts to be reimbursed. Owner may request reasonable additional documentation from Contractor with regard to time and task or expenses.
- b. Receipts are required for all expenses and materials to be reimbursed.
- c. Invoice approvals and payments are subject to timely and satisfactory completion of work, with questions or disputes on invoice charges to be addressed promptly by both parties.
- d. Unless there are questions or disputes pending resolution, payments will be made within 30 days of receipt of invoices.
- e. Any payment not received by Contractor within 45 days of receipt of approved invoices is subject to legal rate of interest in Maine (6% / annum).
- f. Owner has the right to withhold payment for invoices not approved due to lack of documentation or late or unsatisfactory work.

- g. A Claim and Lien Waiver is to be signed upon completion of work and prior to receipt of final payment. A form is provided by Owner (see Attachment A). Interim Waivers prior to final completion of work may be required.
- 4. Contractor and Owner Responsibilities
  - a. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences and procedures, and for coordinating all portions of their own Work under the Agreement, with the exception that, as identified by EFI, Owner specifies that Contractor shall consult with representative(s) of the Wabanaki Board with regard to any potential reference that draws from and/or embodies Wabanaki cultural knowledge or intellectual property in their own Work.
  - b. Additional specifications regarding Contractor supervision and direction of the work may be mutually determined.
  - c. The Contractor warrants that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted.
  - d. Owner's review and approval of any and all deliverables shall be for the purpose of providing Contractor with information and not for the purpose of determining the accuracy and completeness of such. No such review or approval by Owner shall alter or release Contractor's responsibilities hereunder.
  - e. Owner will work to ensure clear and transparent permissions and consent have been obtained in contexts where any reference draws from and/or embodies Wabanaki cultural knowledge in the design, instruments of service, interpretation, promotion or fundraising for the projects.
  - f. If within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Agreement or generally accepted industry standards, the Contractor shall correct it promptly, at no cost to the Owner, after receipt of written notice from the Owner to do so.
  - g. Contractor shall exercise reasonable skill and care in the preparation and furnishing of any designs, drawings or specifications for the Project. To the extent any such designs, drawings or specifications furnished or prepared by the Contractor are discovered to contain any errors, conflicts or omissions, Contractor shall be responsible to Owner for all damage caused by any such errors, conflicts or omissions, including but not limited to promptly correcting them at no additional cost to the Owner.
- 5. Termination
  - a. Either party may immediately terminate Agreement by giving written notice to the other party if:
    - 1) The other party is in material breach of its obligations and fails to remedy such breach within 7 days of receiving written notice requiring it to do so; or
    - 2) The other party files for bankruptcy.
  - b. Owner may terminate Agreement within 14 days of giving written notice to Contractor for the Owner's convenience and without cause.
    - 1) On termination for convenience, the Owner shall pay Contractor only an amount due and owed under Agreement at the date of termination and exclusively for Work actually performed to the date of termination.
    - 2) Contractor waives any other claims for payment and damages including anticipated profits.
- 6. Intellectual Property and Promotional Materials
  - a. Absent reference identified by EFI that draws from and/or embodies Wabanaki cultural knowledge and/or intellectual property in the Work, Contractor retains full and exclusive Ownership and rights to designs, drawings or specifications and other documents associated with the Work, subject to clauses a – d below.
  - b. In cases where there is reference identified by EFI that draws from and/or embodies Wabanaki cultural knowledge and/or intellectual property in the Work, such knowledge or property is owned by the Wabanaki Nations, currently represented by the Wabanaki Board. Individual Wabanaki artists and authors retain their intellectual property rights. In cases where the Work may be subject

to copyright, EFI will work to ensure clear and transparent permissions and consent have been attained by the parties.

Contractor:

- a. As identified by EFI, shall include proper and appropriate acknowledgement and attribution of any Wabanaki cultural knowledge and/or intellectual property in Contractor's instruments of service, designs, and photographic or artistic representations of the Project among the Contractor's promotional and professional materials. Owner shall determine what constitutes proper and appropriate acknowledgement and attribution in consultation with Contractor.
- b. Shall not include the Owner's proprietary or confidential information without Owner's written permission.
- c. May request non-confidential public relations information and materials related to the Project from the Owner. Such information or materials are not to be unreasonably withheld.
- d. Upon conclusion of the Reserved Rights period, Contractor remains obligated to acknowledge and attribute Wabanaki cultural knowledge and/or intellectual property for all future uses of the Work and/or publications based in whole or in part on the Work.
- e. All publications commissioned by EFI representing the VCS Project in print and visual form will be considered works of joint authorship by the commissioned party and the Wabanaki Nations, currently represented by the Wabanaki Council and/or individual Wabanaki artists.

Owner:

- a. Shall take responsibility for working to identify and ensure proper and appropriate acknowledgement and attribution to the Wabanaki Nations and Wabanaki individuals of any reference that draws from and/or embodies Wabanaki cultural knowledge and/or intellectual property contributed to the Work.
- a.-b. May use and duplicate the designs, drawings, specifications, and documents as called for in constructing, using, maintaining, altering and adding to the projects.
- b.-c. May make available designs, drawings, specifications, and documents to other contractors as necessary for execution of the projects.
- c.-d. With written permission of Contractor, and with proper and appropriate acknowledgement and attribution, as well as permissions and consent from the Wabanaki Board, may use particular portions of the Work or associated documents for public relations purposes. Such permissions are not to be unreasonably withheld by Contractor.
- d.-e. Subject to terms and duration of its Reserved Rights, shall provide reasonable access to the Project to the Contractor.

7. Insurance Requirements (may vary with each individual firm as specified in their contract). Contractor shall for the term of this Agreement provide and maintain in full force and effect through the absolute date of project completion, August 1, 2023 or for a subsequent period if specified, at no cost to the Owner, the following minimum amounts of insurance:

- a. Commercial General Liability insurance with coverage on a primary, non-contributing, occurrence basis including premises/operations coverage (including medical payments coverage), products/completed operations coverage personal injury coverage and XCU (Explosion, Collapse and Underground) coverage. The minimum limit for bodily injury and property damage shall be \$1,000,000 each occurrence and \$2,000,000 aggregate per annum. Owner will be named as additional insured.
- b. (If not covered within general liability) Automobile Liability: \$500,000 per incident combined single limit and aggregate for bodily injury and property damage.
- c. Professional Liability: Contractor shall obtain and maintain a policy of professional liability insurance covering negligent acts, errors and omissions in the performance of Contractor's work (with prior acts coverage sufficient to cover the work performed under this Agreement) with policy limits in the amount of not less than \$3,000,000 each occurrence / \$3,000,000 aggregate.

- d. Workers' Compensation: Workers' Compensation insurance sufficient to meet statutory requirements in the Contractor's jurisdiction in which the work is being performed.
- e. Standard Certificates of Insurance must be provided to the Owner, showing evidence of all insurance coverage required under this Agreement. All policies shall provide that at least thirty (30) days' prior written notice to the Owner will be provided by the Insurer before cancellation or material change will be effective.

8. Indemnification, Hazardous Materials or Toxic Substances

- a. The Contractor shall indemnify, hold harmless and defend the Owner from and against claims, demands, obligations, actions, causes of action, suits, judgments, awards, fines, penalties, liens, damages of any type; costs, expenses, attorney and consultant fees; losses or liability, at law or in equity, of every kind and nature whatsoever ("Claims") arising out of Contractor's Work, performance of the Work or Contractor's other operations on the Project.
- b. Unless otherwise required in the Agreement, Contractors 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.

9. Dispute Resolution, Choice of Law, Venue and Personal Jurisdiction

- a. Mediation. The Owner and the Contractor may mutually agree to submit to mediation any claim, dispute or other matter in question arising out of or related to this Agreement. The mediation shall be held in the State of Maine.
- b. Litigation, Venue and Jurisdiction. For any claim not resolved by mediation, the method of binding dispute resolution shall be litigation in court. The Owner and the Contractor irrevocably consent that the state and/or federal courts of the State of Maine shall have the exclusive and sole jurisdiction for the resolution of any litigation arising from or concerning this Agreement. The Owner and the Contractor each irrevocably (a) consents to the personal jurisdiction of said courts; and (b) waives any venue or inconvenient forum defense to any proceeding maintained in such courts.
- c. Contractors located outside the United States shall appoint and designate an agent for service of process in the United States, and agrees that services of process may be accomplished on Contractor's agent in the United States by U.S. certified mail, Federal Express or other overnight delivery carrier. Contractors further waive any service requirements or procedures under the Hague Convention.
- d. Governing Law. All questions concerning this Agreement, including but not limited to the negotiation, execution, performance, construction, interpretation and enforcement of this Agreement, shall be governed by and resolved in accordance with the laws of the State of Maine without application of the principles of conflicts of laws.
- e. Attorneys' Fees and Costs. In the event either the Owner or Contractor become involved in litigation with each other arising out of this Agreement or other performance thereof, the prevailing party, shall be entitled to recover its reasonable attorney's fees, experts' fees, preparation, investigation and court costs, and other costs, charges, and expenses expended or incurred therein from the losing party, and the court shall award such fees costs and expenses to the prevailing party.

10. No Third Party Beneficiary

Nothing in this Agreement between contractor and owner shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.