



March 13, 2020

TO: CADA Board of Directors

**SUBJECT: March 20, 2020 Board Meeting  
AGENDA ITEM 6  
AUTHORIZATION TO AMEND CONTRACT WITH ARCHITECT FOR THE  
1322 O AFFORDABLE HOUSING PROJECT (SOUTHWEST CORNER OF  
14TH AND O STREETS)**

**CONTACT:** Tom Kigar, Special Projects Director  
Wendy S. Saunders, Executive Director

**RECOMMENDED ACTION:**

Staff recommends the Board adopt a resolution authorizing the Executive Director to amend the contract with Williams + Paddon Architects for the 1322 O Affordable Housing Project.

**BACKGROUND**

In July 2019, the Executive Director executed a contract with Williams + Paddon Architects (W + P) to provide Architectural Services for the Yield Study (Phase 1) at a cost of \$14,144. At the August 16, 2019 Board meeting, the Board authorized the Executive Director to amend the contract to proceed with the Schematic Design Phase (Phase 2) and the Design Development Phase (Phase 3) at a cost of \$121,902. At the January 24, 2020 Board meeting the Board approved the Construction Documentation and Permit Processing Phase (Phase 4) at a cost of \$206,808, and the Bidding and Construction Administration (Phase 5), at a cost of \$84,391 bringing the total W + P contract amount to \$427,245.

**ANALYSIS**

In January 2019, Governor Newsom issued EXECUTIVE ORDER N-06-19 that called for the use of State owned surplus land for the development of affordable housing and encouraged the use of renewable construction materials, such as cross-laminated timber. As staff and W + P focused on incorporating cross-laminated timber during the Design Development Phase, they realized the structural engineer W + P had included in their design team was not current in the fast-growing knowledge and practices of renewable construction materials. As a result, W + P obtained the proposal included as **ATTACHMENT 1** from Holmes Structures, the most knowledgeable structural engineering firm dealing with renewable construction materials in California. Holmes' fee represented \$70,000 more than W + P's contract with their original structural engineer. The recommended amendment for \$70,000 brings the total W + P contract amount to \$497,245.

## **FINANCIAL IMPACT**

The \$70,000 cost of the proposed amendment will come from the FY 19-20 budget.

## **CONTRACT AWARD CONSIDERATIONS**

Staff is requesting Board approval to amend the W + P contract because the value the contract exceeds the Executive Director's \$50,000 professional services contract authority.

## **ENVIRONMENTAL REVIEW**

On November 13, 2019, the Board found the project to be exempt from CEQA based upon its consistency with the Central City Specific Plan and EIR.

### **Attachment:**

1. Agreement for providing structural engineering services from Holmes Structures dated November 27, 2019

**AN AGREEMENT BETWEEN STRUCTURAL ENGINEER OF RECORD AND  
CLIENT FOR PROFESSIONAL SERVICES**

November 27, 2019

Jack Paddon  
Williams + Paddon  
1715 R Street, Suite 200  
Sacramento, California 95811

**19439.10 1322 O St Courtyard Apartments  
1322 O St, Sacramento CA**

**AUTHORIZATION FOR PROFESSIONAL SERVICES**

**Dear Jack,**

We are pleased to propose the following agreement for providing structural engineering services on this project. The scope of such consulting and design services (Professional Services) shall be as follows:

**DESCRIPTION OF PROJECT**

The proposed project includes the design and construction of an affordable multi-family housing project in downtown Sacramento, CA. The development entity is the Capital Area Development Authority (CADA).

The project includes 56 units over 5 stories of type III-B construction. The building is predominately of residential use with additional uses at the ground floor (retail, mechanical & community) and at the 5<sup>th</sup> floor (community assembly).

Based on the schematic design phase the structural system will utilize mass timber (specifically cross laminated timber – CLT) floor panels supported on traditionally framed wood stud walls. The lateral system will be a traditional plywood shear wall system. We note that an alternate means and methods request (AMMR) will need to be approved by the City of Sacramento for the use of the CLT as the floor diaphragm component of the lateral load resisting system.

## DOCUMENTS REVIEWED

In preparation of this Authorization for Professional Services we have reviewed the following documentation:

- Architectural Schematic Design drawings, prepared by *Williams + Paddon Architects + Planners*, dated 10/03/2019 (note: these drawings were received 11/12/2019 the date on the drawings may be incorrect)
- Concept structural design narrative, prepared by *Holmes Structures*, dated 10/30/2019.
- Courtyard Apartments Preliminary Estimate, prepared by *Tricorp Group*, dated 11/06/2019.

## SCOPE OF SERVICES

We will prepare full engineering design and documentation services for the primary structural system of the building. This includes the foundation, gravity framing and lateral load resisting system for the building.

We will prepare performance specifications for secondary structural elements including, but not limited to:

- Exterior cladding
- Anchorage of mechanical, electrical and plumbing equipment.
- Window washing systems

We will deliver our services for the scope referenced above in the typical phases. The tasks and deliverables we have allowed for in each phase are described in detail in exhibit A.

Please note that we have made the following assumptions in the preparation of this proposal:

- There will be one permit package for the project with all architectural, structural and other consultant packages submitted concurrently.
- Building Information Models (BIM) shall contain elements modelled to a Level of Development (LOD) 200, unless otherwise noted. Refer to AIA Document G202-2013, Article 2 for detailed description of Level of Development.
- There will be a local structural engineering engaged on this project to undertake a review of the construction documentation and provide the required structural observations in accordance with the California Building Code. The scope of the local structural engineer is to be mutually agreed by Holmes Structures and Williams + Paddon.
- The design of the building will follow the design intent depicted in the above referenced schematic design drawings by Williams + Paddon.

Please note that the following items are not included in our base scope of services:

- Special studies including wind tunnel testing

- Detailed design of secondary structural elements (i.e. window supports, curtain wall supports, exterior cladding, window washing equipment, elevator machine supports and miscellaneous metal supports)
- Landscape structural elements such as site walls, trellis, etc
- Geotechnical investigation and report
- Material testing and destructive investigation
- Special inspections during construction
- Preparation of demolition documentation (for existing buildings)
- Engineering or inspection of contractor temporary works such as shoring, bracing, underpinning or propping
- Work required to address design revisions after completion of the DD phase
- As-built structural documentation
- Work required to correct non-conforming construction undertaken by the contractor

**SCHEDULE**

The professional fees below are based on the schedule as advised via email on 11/18/2019. The key deliverable dates in the schedule are as follows:

Phase	Commence	Complete
Design Development	11/25/2019	1/31/2020
Construction Documents	2/8/2020	4/30/2020
Permitting	5/1/2020	11/1/2020
Construction Administration	11/1/2020 (duration 10 months)	

Should the schedule change from that referenced above it will be considered an additional service and our fees will be adjusted accordingly.

**PROFESSIONAL FEES**

We propose to provide our professional services on a combination of Fixed Fees and Time & Materials as follows:

*Design Phases*

Phase	Fee
Schematic Design	complete
Design Development	\$35,000
Construction Documents	<u>\$70,000</u>
Sub-Total Design Phases	\$105,000 – Fixed Fee



Construction Phases

Phase	Fee
Bidding, Negotiation, Permitting	\$10,000
Construction Administration	<u>\$30,000</u>
Sub-Total Construction Phases	\$40,000 est. T&M

All time and materials phases (as noted above) and authorized Additional Services are charged at our current standard hourly rates. Our current standard hourly rate schedule is:

Principal	\$230.-\$260.	Structural Designer	\$125.
Associate Principal	\$200.-\$225.	Senior Revit Specialist	\$145.
Senior Engineer	\$165.-\$185.	Revit Specialist	\$125.-\$135.
Project Engineer	\$135.-\$155.	Administration	\$80.

Hourly rates are subject to revision on the First Day of February and the First Day of August each year. The unearned portion of the fixed fee is also subject to revision based upon revised salary scales every six months from the date of Contract Execution.

REIMBURSABLE EXPENSES

Reimbursable expenses shall be billed at a multiple of 1.125 times the cost incurred.

Reimbursable expenses are expenses incurred directly in connection with the project such as, but not limited to, transportation, out-of-town travel and subsistence, overnight deliveries, courier services, additional specialized professional services, sales taxes, permits and filing fees for securing approvals from government authorities, renderings or models, expenses for professional liability insurance or additional insurance beyond the normal amount carried and the cost of reproductions beyond those normally required for coordination and information purposes.

ADDITIONAL PROVISIONS

To complete the scope of services described in this contract we will need the following information to be provided by the Client.

- Geotechnical report

The geotechnical report will need to be prepared specifically for this project and provide design information and criteria for use in the structural design.



This Letter Agreement and Exhibits A & B hereto, constitute the entire Agreement between the parties. Please examine these documents and, if acceptable, sign and return an original to us. Retain a copy for your records. We are authorized to provide services upon receipt of a signed contract.

We look forward to working with you on this project.

Sincerely,

HOLMES STRUCTURES,  
a California registered partnership



Zander Sivyer S.E.  
PRINCIPAL & CEO  
S4952

ACCEPTANCE:

WILLIAMS + PADDON

Jack Paddon  
PRINCIPAL

Date: \_\_\_\_\_, 2019

## EXHIBIT A — SUMMARY OF SERVICES

This is an exhibit attached to and made a part of the Agreement dated 11/27/2019, by and between Holmes Structures (SER) and Williams + Paddon (Client) for 1322 O St Courtyard Apartments - 1322 O St, Sacramento, CA (Project).

We will deliver our scope of services referenced in our letter agreement in phases. The specific tasks and deliverables for each phase are described below.

### SCHEMATIC DESIGN (SD)

We understand the schematic design phase has been completed and that no services are required as part of this phase.

### DESIGN DEVELOPMENT (DD)

We will progress the selected design chosen at the end of the schematic design phase into design documentation that will form the basis of the construction documents. We will include comments from the development, design and construction team on the SD package in this phase. The design development phase will begin the preparation of the performance specifications for the secondary structural elements (egress stairs, internal partition walls etc).

The tasks we have allowed for in this phase include:

- Include comments from the development and design on the SD documents in the design development package
- Progress REVIT modelling of the building (LOD 100)
- Complete code analysis of structural system
- Prepare performance specifications for secondary structural elements i.e. egress stairs, internal partition walls etc
- Meet with the project architect as needed to progress the design and fix the columns, shear walls, and beams
- Prepare design development documents including drawings and specifications, the drawings will include sections, elevations and representative details sufficient for the contractor to identify options for the means and methods of construction
- Prepare alternate means and methods request (AMMR) for the City of Sacramento to be incorporated in any larger pre-application package prepared by the project sponsor
- Meet with the project architect and design team as needed to progress the design
- Review construction cost estimates

Our deliverables for this phase include:





- 100% Design Development (DD) documentation package including specifications and drawings

## CONSTRUCTION DOCUMENTATION (CD)

During this phase we will progress the construction documentation including calculations, specifications and drawings sufficient for the bid, permit and construction of the project. We will include comments from the development, design and construction team on the DD package in this phase.

The tasks we have allowed for in this phase include:

- Include comments from the development, design and construction team on the DD documents in the construction documents
- Complete REVIT modelling of the building (LOD 200)
- Coordinate with project team all structural opening conflicts
- Complete performance specifications for secondary structural elements i.e. egress stairs, internal partition walls etc
- Complete performance specifications and/or details for exterior wall and other architectural elements
- Meet with the project architect as needed to complete the design documentation and address any coordination items identified
- Prepare construction documents including calculations, specifications and drawings

Our deliverables for this phase include:

- 90% complete CD package including calculations, specifications and drawings sufficient for Permit submission & Bidding

## PERMITTING, BIDDING & NEGOTIATION

We will assist the team as needed during this phase to review sub-contractor bids for the various structural trades and answer pre-construction requests for information (p-RFIs) issued during or after the bid process.

The tasks we have allowed for in this phase include:

- Review bid scopes for key structural trades (i.e. mass timber, concrete, steel, reinforcing)
- Respond to contractor and sub-contractor pre-construction RFIs
- Respond to City of Sacramento Building Division plan check comments, if any, and update construction documentation to include comments
- Attend pre-bid conference(s) and building tours, maximum of 1
- Attend final round of contractor's scope review meeting
- Assist in value engineering as required

Our deliverables for this phase include:

- 100% CDs including plan check comments and p-RFIs issued for construction

#### CONSTRUCTION ADMINISTRATION (CA)

During the construction phases of the project we will support the project architect in ensuring the contractor meets the requirements of the specification. As noted in the assumptions listed in the scope of services we have assumed there will be a local structural engineer engaged to undertake all structural observations and attend any on site meetings with the contractor.

The tasks we have allowed for in this phase include:

- Review contractor submittals
- Respond to contract issued RFIs
- Make site visits (max of 2) to walk the project with the superintendent for the General Contractor
- Review reports for structural observations undertaken by others
- Attend site meetings (included in max visits referenced above)
- Assist architect in preparing ASI, proposal requests, change orders and construction change directives
- Assist the architect in preparing punch list items and determining dates of substantial and final completion

Our deliverables for this phase include:

- Letter of final completion.

## EXHIBIT B - TERMS AND CONDITIONS

This is an exhibit (with Sections 1 through 8) attached to and made a part of the Agreement dated DATE, by and between Holmes Structures (SER) and Williams + Paddon (Client) for 1322 O St Courtyard Apartments – 1322 O St, Sacramento, CA (Project).

### **1 GENERAL**

#### **1.1 This Agreement**

- 1.1.1 These Terms and Conditions, along with the Letter Agreement, form the Agreement as if they were part of one and the same document. Unless otherwise specified, this Agreement shall be governed by the laws of the principal place of business of the SER.
- 1.1.2 The Letter Agreement may limit or negate the applicability of these Terms and Conditions. Such limitation shall take precedence over provisions of this Exhibit.
- 1.1.3 If a Prime Design Professional is also engaged by the Client to participate in this project, then that Prime Design Professional shall be responsible for determining and interpreting the needs of the Client, and for coordinating the work of the SER and other members of the design team.

#### **1.2 General Obligations of the SER and the Client**

- 1.2.1 The SER shall provide those professional services as described in the Letter Agreement and detailed in these Terms and Conditions. In rendering these services, the SER shall apply the degree, skill and care ordinarily exercised by structural engineers under similar circumstances.
- 1.2.2 The SER and Client shall each designate, in writing, a representative to act with authority on their behalf with respect to all aspects of the Project.
- 1.2.3 The Client shall verify, in writing, that the project will be financed adequately, including provisions for contingencies, to accomplish the stated and desired goals and commitments.
- 1.2.4 The Client shall provide all criteria and information with regard to their requirements for the Project. This shall include, but not be limited to, review and approval of design in the schematic design phase, design development phase, and contract documents phase. These approvals shall include a written authorization to proceed to the next phase.
- 1.2.5 The Client shall provide testing necessary to identify hazardous materials and pollutants, and shall provide test results to the SER, and be responsible for the remediation in accordance with the governing laws, if required.
- 1.2.6 The SER shall request and the Client shall provide those geotechnical investigations, property surveys, utility surveys, reports and other data necessary for performance of the project.
- 1.2.7 Professional services provided by the Client shall be performed by professionals licensed in the State of the Project and experienced with respect to the service being provided.
- 1.2.8 The SER is entitled to rely on the accuracy and completeness of services provided by other design professionals retained by the Client.
- 1.2.9 Defects in Service: The Client shall promptly report to the SER any defects or suspected defects in the SER's services of which the Client becomes aware, so that the SER may take measures to minimize the

consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement.

## **2 BASIC SERVICES**

See Letter Agreement and Exhibit A for description of included Basic Services.

## **3 ADDITIONAL SERVICES**

Any service not included in the specified scope of services in the Letter Agreement is considered an additional service. Additional services beyond those described in the Letter Agreement may be requested. These services may be provided by the SER under terms mutually agreed upon by the Client and the SER. Additional Services are services which may or may not be foreseen at the beginning of design stages, and are not included as Basic Services.

## **4 EXTRA SERVICES**

Extra Services are services, which arise as a result of unforeseen circumstances during the design or constructions processes and are not included in the Basic Services. Examples include, but are not limited to:

1. Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
2. Services resulting from changes necessary because of a construction cost overrun which is outside the control of the SER.
3. Services resulting from revisions which are inconsistent with approvals or instructions previously given by the Client.
4. Services resulting from revisions due to the enactment or revision of codes, laws, or regulations subsequent to the start or preparation of construction documents.
5. Services resulting from Client-initiated change orders.
6. Services resulting from corrections or revisions required because of errors or omissions in construction by the building contractor or in design by consultants other than the SER.
7. Providing recommendations regarding claims, disputes, or other matters relating to execution or progress of the work.
8. Services resulting from construction procedures over which the SER has no control.
9. Services due to extended design or construction time schedules.
10. Services, including assisting in preparation for litigation or arbitration as witnesses or consultants, in connection with any public hearing, arbitration, mediation, or legal proceedings with respect to the project.
11. Services resulting from damage, as the result of fires, man-made disasters, or acts of God.
12. Review and design of alternate or substitute systems.
13. Review of additional shop drawing submittals when occasioned by improper or incomplete submittals.
14. Attendance at construction progress meetings.

15. Overtime work required by the Architect/Client.
16. Services required to make changes resulting from value-engineering review or project peer review.
17. Services rendered for special foundations when the discovery of poor soil conditions is made after execution of this Agreement. Examples include, but are not limited to: deep foundations, mat footings, structural grade slabs, and grade beams.

## **5 FEES AND PAYMENTS**

### **5.1 Fees and Other Compensation**

- 5.1.1 Fees for Basic Services, Additional Services, Extra Services and Compensation for Reimbursable Expenses are set forth in the Letter Agreement.

### **5.2 Payments on Account**

- 5.2.1 Invoices for the SER's services shall be submitted on a monthly basis. Invoices shall be payable when rendered and shall be considered past due if not paid within 30 days after the invoice date.
- 5.2.2 Any inquiry or questions concerning the substance or content of an invoice shall be made to the SER in writing within 10 days of receipt of the invoice. A failure to notify the SER within this period shall constitute an acknowledgment that the service has been provided and payment is due.

### **5.3 Late Payments**

- 5.3.1 A service charge will be charged at the rate of 1.5% (18% true annual rate) per month or the maximum allowable by law on the then outstanding balance of past due accounts. In the event any portion of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees. Payments on account will be credited first to any service charge and then to any outstanding balances due.
- 5.3.2 In the event that any portion of an account remains unpaid 30 days after billing, the SER may, without waiving any claim or right against the Client, and without liability whatsoever to the Client suspend or terminate the performance of all services.

## **6 INSURANCE, INDEMNIFICATION & RISK ALLOCATION**

### **6.1 Insurance**

- 6.1.1 The SER shall secure and endeavor to maintain professional liability, commercial general liability and automobile liability insurance to protect the SER from claims for negligence, bodily injury, death, or property damage which may arise out of the performance of the SER's services under this Agreement. The SER shall also carry Workers' Compensation insurance. The SER shall, if requested in writing, provide certificate confirming such insurance to the Client.

## **6.2 Indemnification**

- 6.2.1 The Client shall assume the defence of, indemnify and hold harmless the SER and all of its personnel, and the other design team members, from and against any and all damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the project, excepting only any such damages that are determined to have been solely caused by the SER's negligent acts or wilful misconduct in connection with the Project, or by anyone for whom the SER is legally liable.
- 6.2.2 The SER shall indemnify but not defend the Client and its personnel from and against liabilities for damages, to the extent they are actually caused by the negligent act, error, or omission by the SER in the performance of its services under this Agreement, subject to the provisions in the paragraph 6.3, below on Risk Allocation.
- 6.2.3 The Client shall indemnify and hold harmless the SER and all of its personnel, and other design team members from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising from the presence, discharge, release or escape of asbestos, hazardous waste, or other contaminants at the site. Both parties acknowledge that the SER's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the SER or any other party encounters any hazardous or toxic materials, or should it become known to the SER that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the SER's services, the SER may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.
- 6.2.4 The indemnifications as stated in 6.2.1 and 6.2.3 shall apply to the respective officers, members, directors, partners, agents, employees, and subconsultants of the SER and Client.

## **6.3 Risk Allocation**

- 6.3.1 **Limitation of Liability:** In recognition of the relative risks, rewards and benefits of the Project to both the Client and the SER, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, to the Client and anyone claiming by or through the Client, for any and all injuries, claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the project or the Agreement from any cause or causes, shall not exceed the total compensation received by the SER under this Agreement, or the total amount of \$50,000, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. Such causes include, but are not limited to, the SER's negligent acts, errors, omissions, strict liability, breach of contract, or breach of expressed or implied warranty or any other

theory of legal liability. This limitation of liability shall apply to the Structural Engineer of Record and its officers, members, directors, partners, agents, employees, and subconsultants.

- 6.3.2 Delays: The Client agrees that the SER is not responsible for damages arising directly or indirectly from any delays for causes beyond the SER's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in timely manner; failure of performance by the Client or the Client's contractors or consultants; or discovery of any hazardous substances or differing site conditions. In addition, if the delays resulting from any such causes increase the cost or time required by the SER to perform its services in an orderly and efficient manner, the SER shall be entitled to an equitable adjustment in schedule and /or compensation.
- 6.3.3 Consequential Damages: Notwithstanding any other provisions of this Agreement, and to the fullest extent permitted by law, neither the Client nor the SER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the SER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- 6.3.4 Statute of Repose and Limitation: All legal causes of action between the parties to this Agreement shall accrue and any applicable statutes of repose or limitation shall begin to run not later than the date of Substantial Completion. If the act or failure to act complained of occurs after the date of Substantial Completion, then the date of final completion shall be used, but in no event shall any statute of repose or limitation begin to run any later than the date the SER's services are completed or terminated.

## **7 MISCELLANEOUS PROVISIONS**

### **7.1 Reuse of Documents, Ownership, Use of Documents and Computer Aided Drafting (CAD) Files, and Building Information Models (BIM)**

- 7.1.1 All documents including drawings, specifications, computer files, CAD files, design calculations and survey notes are instruments of service and belong to and remain the property of SER, regardless of whether the instruments were copyrighted or whether the Project for which they were prepared is executed. SER retains all copyright interests and rights in all such documents. Client may, at its expense, obtain reproducible copies of drawings and copies of other documents, in consideration of which there will be mutual agreement that Client will use them solely in connection with the specific Project for which they were prepared.

7.1.1 Any reuse of the Drawings or Specifications for, among other things, development of another project, or completion of this project by others, revisions, alterations, deletions from, additions to, or other modifications of the Drawings or Specifications, shall constitute an “unauthorized reuse” and be prohibited unless performed by or at the written consent of SER. Client further agrees to defend, indemnify and hold SER, its employees and subconsultants harmless from and against any and all claims, demands, damages, losses or expenses, including court and arbitration costs, and attorneys’ fees, arising out of or resulting from any such unauthorized reuse.

7.1.2 Building Information Models (BIM), if included within scope of the project, shall contain elements modelled to a Level of Development (LOD) 200, unless otherwise noted. Refer to AIA Document G202-2013, Article 2 for detailed description of Level of Development.

## **7.2 Building Permit Plan Check**

7.2.1 Our documentation is prepared specifically for construction, and designed according to the applicable building codes. While we make every effort to present the information in such a way that plan checking is facilitated, the construction is our first priority. Different building officials in different areas will require differing levels of documentation and review in order to satisfy themselves that the design meets the code. In particular, it is our experience that plan check review is more intensive and requires greater time input where it is contracted out to external review.

7.2.2 While reasonable effort will be made to provide an appropriate level of information for typical plan review, in some cases there will be significantly more work required by the plan checkers. This should not be construed that the design as submitted fails to meet code. The SER will attempt to limit the cost of such additional work, but in such cases the time allocation made in the budget may be insufficient, due to circumstances beyond our control.

## **7.3 Opinion of Probable Construction Costs**

7.3.1 SER’s evaluations of Client’s probable project budget and any opinions of probable construction costs as provided for herein will be made on the basis of SER’s experience and qualifications and will represent SER’s best judgment as a qualified design professional familiar with the construction industry. Because SER has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractor’s methods of determining prices, or over the competitive bidding process or future market conditions, SER does not guarantee or represent that proposals, bids, negotiated prices, or actual construction costs will not vary from the opinions of probable construction costs prepared or agreed upon by SER. If Client wishes greater assurance as to construction costs, Client shall employ an independent cost estimator.

## **7.4 Hidden Conditions**

7.4.1 A structural condition is hidden if concealed by existing finishes or if it cannot be investigated by reasonable visual observation. If SER has reason to believe that a structurally deficient condition may



exist, the SER shall notify the Client who shall authorize and pay for all costs associated with the investigation of such a condition and if necessary, all costs necessary to correct said condition. If (1) the client fails to authorize such investigation or correction after due notification, or (2) SER has no reason to believe that such a condition exists, then Client is responsible for all risks associated with this condition, and SER shall not be responsible for the existing condition nor any resulting damages to persons or property. The SER shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

## **7.5 Review of Contractor's Work**

7.5.1 SER shall not supervise, direct, or have control over contractor's work. SER shall not be responsible for the contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety program and procedures employed by the contractor on the job site. The SER shall not be responsible for Contractor's failure to carry out the work in accordance with the Contract Documents.

## **7.6 Termination, Successors and Assigns and No Third Party Beneficiary**

- 7.6.1 This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform its obligations hereunder. In the event of termination, Client shall pay SER for all services rendered to the date of termination, all reimbursable expenses, reasonable termination expenses and anticipated profits on services performed.
- 7.6.2 The Client and SER each binds himself or herself, partners, successors, executors, administrators, assigns and legal representative to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representative of such other party in respect to all covenants, agreements, and obligations of this Agreement.
- 7.6.3 Neither the Client nor SER shall assign, sublet or transfer any rights under or interest in (including but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the SER from employing such independent consultants, associates and subcontractors, as he or she may deem appropriate to assist in the performance of services hereunder.
- 7.6.4 SER and Client agree that the services performed by the SER pursuant to this Agreement are solely for the benefit of the Client and are not intended by either the SER or the Client to benefit any other person or entity. To the extent that any other person or entity, including but not limited to the Contractor and/or any of its Subcontractors and other Design Professionals, is benefited by the services performed by the SER pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this contract.

7.6.5 Partnership Protection: It is intended by the parties to this Agreement that the SER's services in connection with the Project shall not subject the SER's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the SER, a California partnership, and not against any of the SER's individual employees, officers or directors.

## **7.7 Dispute Resolution**

7.7.1 In an effort to resolve any conflicts or disputes that arise regarding the performance of this agreement, the Client and SER agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation service experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-condition to the initiation of any further proceedings. It is further agreed that any dispute that is not settled pursuant to such mediation shall be adjudicated by a court appointed referee in accordance with the Judicial Reference procedures as set forth in California Code of Civil Procedure Section 638 et seq. The parties hereby mutually agree to waive any right to a trial by jury regarding any dispute arising out of this Agreement.

7.7.2 The parties further agree to include a similar mediation, Judicial Reference, and waiver of jury trial provision in their agreements with other independent contractors and consultants retained for the project and require them to similarly agree to these dispute resolution procedures.

7.7.3 In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations.

## **7.8 Severability and Survival**

7.8.1 Severability: Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

7.8.2 Survival: Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

## **7.9 Governing Laws**

7.9.1 This agreement shall be governed by the laws of the principal place of business of the SER – San Francisco, California.

## **7.10 Interpretation**

7.10.1 Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to all legal theories of recovery, including breach of contract or warranty,

breach of fiduciary duty, tort (including negligence), strict or statutory liability, or any other case of action, provided that these limitations on liability, waivers and indemnities will not apply to any losses or damages that may be found by a trial of fact to have been caused by the SER's sole or gross negligence.

**8 SUPPLEMENTAL CONDITIONS**

None.

**RESOLUTION NO. 20 - 03**

Adopted by the Capitol Area Development Authority

March 20, 2020

**RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO AMEND THE CONTRACT WITH WILLIAMS + PADDON ARCHITECTS FOR THE 1322 O AFFORDABLE HOUSING PROJECT**

**WHEREAS**, CADA entered into a Consulting Agreement for Design Services with Williams + Paddon (W + P) and authorized it to commence work on the first of five phases of design work; and

**WHEREAS**, on August 16, 2019, the Board authorized the Executive Director to amend the contract with W + P to commence work on the Schematic Design Phase (Phase 2) and the Design Development Phase (Phase 3) to prepare and submit financing tax credit applications in early 2020 at the not-to-exceed cost of \$121,902; and

**WHEREAS**, in January 2019, Governor Newsom issued EXECUTIVE ORDER N-06-19 that called for the use of State owned surplus land for the development of affordable housing and encouraged the use of renewable construction materials, such as cross-laminated timber; and

**WHEREAS**, on January 24, 2020 the Board approved the Construction Documentation and Permit Processing Phase (Phase 4) at a cost of \$206,808, and the Bidding and Construction Administration (Phase 5), at a cost of \$84,391 bringing the total W + P contract amount to \$427,245; and

**WHEREAS**, on November 27, 2020 W + P received a proposal from Holmes Structures for incorporation of renewable construction materials for \$70,000 more than W + P's contract with their original structural engineer.

**NOW, THEREFORE, BE IT RESOLVED**, by the Capitol Area Development Authority Board of Directors that the Board authorize the Executive Director to amend the contract with W + P in the amount of \$70,000 to authorize the hiring of Holmes Structures.

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Ann Bailey, Chair

ATTEST:

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Secretary to the Board of Directors