


AIA[®] Document B121[™] – 2018
**Standard Form of Master Agreement Between Owner and Architect for Services
provided under multiple Service Orders**

AGREEMENT made as of the Nineteenth day of March in the year Two Thousand Twenty

(Paragraph deleted)

BETWEEN the Owner:

Dine' College
P.O. Box C-12
Tsaile, Arizona 86556
928-724-6774

and the Architect:

(Name, legal status, address, and other information)

Dyron Murphy Architects, P.C.
4505 Montbel Place NE
Albuquerque, New Mexico 87107
505-830-0203

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

This document does not contain a description of the Architect's scope of Services and related terms. This document is intended to be used in conjunction with AIA Document B221[™]-2018, Service Order for use with Master Agreement Between Owner and Architect

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ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for five years after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Service Orders agreed to by the Parties within the term of this Master Agreement until completion of the Service Order. In the event of a conflict between terms and conditions of this Master Agreement and a Service Order, the terms of the Service Order shall take precedence for the services provided pursuant to the Service Order. An agreed upon Service Order together with this Master Agreement form a Service Agreement. A Service Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Agreement may be amended or modified only by a Modification.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Service Orders under this Master Agreement are completed or terminated.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

Charles M. Roessel, President
Dine' College
P.O. Box C-12
Tsaile, Arizona 86556
T: (928) 724-6774

§ 1.4.1 In each Service Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Service Order.

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§ 1.5 The Architect identifies the following representative authorized to act on the Architect's behalf with respect to this Master Agreement:

Dyron V. Murphy, AIA, NCARB, Principal
Dyron Murphy Architects, P.C.
4505 Montbel Place NE
Albuquerque, New Mexico 87107
T: (505) 830-0203

§ 1.5.1 In each Service Order, the Architect will identify a representative authorized to act on behalf of the Architect with respect to the Service Order.

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

ARTICLE 2 SERVICE ORDERS

§ 2.1 The Owner is not required to issue any Service Orders under this Master Agreement.

§ 2.2 The Architect shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order, or such other document as the Owner and Architect may mutually agree upon. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

(Paragraph deleted)

ARTICLE 3 ARCHITECT'S RESPONSIBILITIES

§ 3.1 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 services provided pursuant to a Service Agreement.

§ 3.2 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 Master Agreement or any Service Agreement.

§ 3.3 The Architect shall provide and maintain the following insurance coverage until termination of this Master Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 9.4.

- .1 General Liability
Policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage
- .2 Automobile Liability
Covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
- .3 Workers' Compensation
Workers' Compensation at statutory limits.

Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.
- .4 Professional Liability

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Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate,

- .5 If the Architect will act as Design Builder for a major construction project, the Architect shall provide a Payment and Performance bond in the Service Agreement for such construction project.

§ 3.4 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.5 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The Architect may provide Additional Services after execution of a Service Agreement without invalidating the Service Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.1 shall entitle the Architect to compensation pursuant to Section 9.3.

§ 4.2 Unless otherwise provided in a Service Order, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to the Service Order, 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 Additional 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 size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals; or
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order.

§ 5.2 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.

§ 5.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, 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 Service Order. The

Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.4 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner's needs and interests under a Service Agreement.

§ 5.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.6 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.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 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 in relation to a Service Agreement.

§ 6.2 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 a Service Agreement is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 6.3 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 under the Service Agreement, including prompt payment of all sums when due pursuant to Articles 8 and 9. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Master Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 10.9, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates a Service Agreement for cause as provided in Section 8.4, the license granted in this Section 6.3, and related to the terminated Service Agreement, shall terminate.

§ 6.3.1 In the event the Owner uses the Instruments of Service without retaining the authors 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 6.3.1. The terms of this Section 6.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 8.4.

§ 6.4 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Master Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 6.5 Except as otherwise stated in Section 6.3, the provisions of this Article 6 shall survive the termination of this Master Agreement.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 General

§ 7.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to any Service Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Master Agreement and within the period specified by applicable

law, but in any case not more than 10 years after the completion of the services provided pursuant to a specific Service Agreement, whichever is sooner. Completion of the services pursuant to a specific Service Agreement shall be the date of Substantial Completion of construction related to the services performed pursuant to the Service Agreement or, where there is no construction work related to a Service Agreement, the date the Architect completes its services under the Service Agreement. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 7.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to a Service Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of a Service Agreement.

§ 7.2 Arbitration

§ 7.2.1 If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement or a Service Agreement subject to, but not resolved by, mediation shall be subject to arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554J and §554K, and as set forth in the Navajo Sovereign Immunity Act, as amended, at 7 N.N.C. §§1101 et seq., Such Arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Master Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration.

§ 7.2.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. Such notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555

§ 7.2.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Master Agreement, shall be specifically enforceable in accordance with applicable law of the Navajo Nation.

§ 7.2.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable Navajo Nation law.

(Paragraphs deleted)

ARTICLE 8 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS

§ 8.1 If the Owner fails to make payments to the Architect in accordance with a Service Agreement, such failure shall be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect's option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment. 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 Owner shall pay the Architect 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.

§ 8.2 If the services under a Service Agreement have been suspended by the Owner, the Architect shall be compensated for services performed prior to notice of such suspension. When the services under the Service Agreement are 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.

§ 8.3 If the Owner suspends the services under a Service Agreement for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate the Service Agreement by giving not less than seven days' written notice.

§ 8.4 Either party may terminate a Service Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 8.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

§ 8.5 The Owner may terminate a Service Agreement, upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed prior to termination and for Reimbursable Expenses incurred.

§ 8.7 In addition to any amounts paid under Section 8.6, if the Owner terminates a Service Agreement for its convenience pursuant to Section 8.5, or the Architect terminates a Service Agreement pursuant to Section 8.3, the Owner shall pay to the Architect the following fees:

(Paragraph deleted)

- .1 Termination Fee:
Not Applicable
- .2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:
To be determined, if necessary, between parties.

§ 8.8 Except as otherwise expressly provided herein, a Service Agreement shall terminate one year from the date of Substantial Completion.

§ 8.9 The Owner's rights to use the Architect's Instruments of Service in the event of termination of a Service Agreement are set forth in Article 6 and Section 9.5 of this Master Agreement.

ARTICLE 9 COMPENSATION

§ 9.1 The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 9.

§ 9.2 Except as otherwise set forth in a Service Order, 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.

Attached as Exhibit A, DMA Hourly Billing Rates

(Table deleted)

§ 9.3 Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services designated in Article 4 as follows:

To be determined between parties if this clause is exercised.

§ 9.4 Compensation for Reimbursable Expenses

§ 9.4.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to a Service Agreement, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;

- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultant's expense of professional liability insurance dedicated exclusively to the Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect or the Architect's consultants, and disclosed by the Architect in writing prior to execution of this Master Agreement or a related Service Agreement;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 9.4.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

§ 9.4.3 Reimbursable Expenses will be allocated to each Service Agreement.

§ 9.5 Payments to the Architect

§ 9.5.1 Progress Payments

§ 9.5.1.1 Payments are due and payable upon presentation of the Architect's
(Paragraphs deleted)
invoice, reflecting current value of work completed.

§ 9.5.1.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, the Owner shall not withhold payments to the Architect pertaining to a Service Agreement to offset amounts in dispute under a separate Service Agreement.

§ 9.5.1.3 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 10 MISCELLANEOUS PROVISIONS

§ 10.1 Each Service Agreement shall be governed by Navajo law.

§ 10.2 Notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to each Service Agreement. Neither the Owner nor the Architect shall assign a Service Agreement without the written consent of the other, except that the Owner may assign a Service Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under the Service Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with the Service Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of the Service Agreement.

§ 10.5 Unless otherwise required in a Service 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.

§ 10.6 The Architect shall have the right to include photographic or artistic representations of the design of the Projects for which services are performed among the Architect's promotional and professional materials. The

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Architect shall be given reasonable access to the completed Projects 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 Projects. This Section 10.6 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 8.4.

§ 10.7 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.7.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.9 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 10.9.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

(Paragraph deleted)

Under all designated Service Orders, where applicable, depending upon funding, scope and schedule, the Architect shall:

- A. Work with the representatives of Dine' College to develop and design future facilities to meet the needs of the student population of the college at all locations of the college. The firm shall emphasize the 'signature' design of each campus or center.
- B. Evaluate and assess facility needs of the college at each Arizona and New Mexico locations on an annual basis. Information provided will be incorporated in CIP plans for both Arizona and New Mexico campuses and centers.
- C. Provide consultation and coordination to college representatives to verify future college programs that will adversely affect the facility requirements of the college.
- D. Emphasize sensitivity to Navajo Cultural, Values and philosophies of the college mission statement in the designing and engineering process to all projects.
- E. Develop detailed scopes of work for all major renovations projects, including electrical, mechanical, construction, and infrastructure at all sites. Scopes of work will include specifications and schematics for each project as needed.
- F. Produce customary Schematic Design, Design Development, and Construction Documents for projects as necessary based on scope outlined in each Service Order.
- G. Work with the Owner in the procurement of construction-based services where needed, or act on behalf of the Owner in alternative delivery systems identified in Article 11 (H).
- H. Provide additional services as are necessary to facilitate project completion based upon required

timeframes established by the Owner. This may include alternative project delivery systems such as **Design-Build, Construction Manager at Risk, or Fast Track** project delivery.

I. Provide to the college, a management chart (i.e.g. gant chart) of all project of proposed designs and engineering costs.

J. Provide to the college, qualifications of key staff for the selected services to be provided.

K. Provide fully developed schematic drawings of new proposed buildings to the college. All submitted drawings will be sole property to the college.

L. Provide estimated costs to all college projects that are funded by Federal agencies.

M. Provide all meeting minutes for Design and Engineering for the purpose of transparencies to oversight of accreditation agencies.

N. Prepare and provide all pertinent documentations associated with the bid solicitation of major projects over sixty five thousand dollars.

O. Coordinate with college representatives in planning and the design of future designated building based on existing master plans of each site.

P. Deliver projects based upon agreements the College may have with external State, Tribal, Federal, or other funding agencies and their related requirements for complying with stipulations in those agreements the College may hold.

Independent Contractor. It is expressly understood that the Architect is an independent contractor. Nothing contained herein shall be construed or applied to create the relationship of employer and employee between the Owner and Architect. Unless otherwise specifically agreed in a Service Agreement, the Architect may act on behalf of the Owner in certain construction projects.

Indemnification and Hold Harmless. To the fullest extent permitted by law, Architect at its own expense shall indemnify and hold harmless Owner from and against any claims, liabilities, losses, damages, costs and expenses, including legal fees, which the Owner sustains as a result of any misconduct or any wrongful or negligent act, error or omission of the Architect that arise out of the services under this Agreement or any Service Agreement or arise out of or result from the Architect's breach of the terms of this Agreement or any Services Agreement. The Architect shall cause this indemnification to be insured under its Professional Liability Insurance Policy. This indemnification and hold harmless obligation shall survive the expiration or termination of this Agreement.

ARTICLE 12 SCOPE OF THIS MASTER AGREEMENT

§ 12.1 This Master 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 Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 12.2 This Master Agreement is comprised of the following documents identified below:

- .1 AIA Document B121™–2018, Standard Form of Master Agreement Between Owner and Architect
- .2 Exhibits:
Exhibit A – DMA Hourly Billing Rates, dated 2020

(Paragraphs deleted)

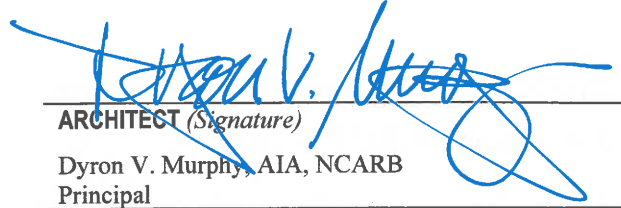
- .3 All the policies required by Section 3.3, and requirement that the Architect, its consultant and subcontractors must provide proof and certificates of insurance prior to the start of any work pursuant to a Service Agreement.

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



OWNER (Signature)

Charles M. Roessel, President
Dine' College



ARCHITECT (Signature)

Dyron V. Murphy, AIA, NCARB
Principal

(Row deleted)



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Additions and Deletions Report for AIA[®] Document B121™ – 2018

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

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PAGE 1

AGREEMENT made as of the Nineteenth day of March in the year Two Thousand Twenty
(In words, indicate day, month, and year.)

...

(Name, legal status, address, and other information)

Dine' College
P.O. Box C-12
Tsaile, Arizona 86556
928-724-6774

...

Dyron Murphy Architects, P.C.
4505 Montbel Place NE
Albuquerque, New Mexico 87107
505-830-0203

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§ 1.1 This Master Agreement shall be effective for ~~one year~~ five years after the date first written above ("Date of this Master Agreement").

...

Charles M. Roessel, President
Dine' College
P.O. Box C-12
Tsaile, Arizona 86556
T: (928) 724-6774

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Dyron V. Murphy, AIA, NCARB, Principal
Dyron Murphy Architects, P.C.
4505 Montbel Place NE
Albuquerque, New Mexico 87107
T: (505) 830-0203

...

§ 2.2 The Architect ~~may decline to accept any Service Order issued by the Owner shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order, or such other document~~

as the Owner and Architect may mutually agree upon. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

§ 2.3 The Architect shall perform the services set forth in each agreed upon Service Order, consisting of AIA Document B221-2018, Service Order, or such other document as the Owner and Architect may mutually agree upon. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect's Services; state the Architect's compensation; and list the attachments and exhibits incorporated by reference.

...

§ 3.3 The Architect shall provide and maintain the following insurance coverage until termination of this Master Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 9.4. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

...

Policy limits of not less than One Million Dollars (\$ 1,000,000.00) for each occurrence and Two Million Dollars (\$ 2,000,000.00) in the aggregate for bodily injury and property damage

...

Covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

.3 Workers' Compensation

~~.3~~ Workers' Compensation at statutory limits.

Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000.00) each accident, One Million Dollars (\$ 1,000,000.00) each employee, and One Million Dollars (\$ 1,000,000.00) policy limit.

.4 Professional Liability

Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per claim and Two Million Dollars (\$ 2,000,000.00) in the aggregate,

.5 If the Architect will act as Design Builder for a major construction project, the Architect shall provide a Payment and Performance bond in the Service Agreement for such construction project.

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§ 7.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for ~~damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201™ 2017, General Conditions of the Contract for Construction- damages.~~ The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 7.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to a Service Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of a Service Agreement, ~~except as specifically provided in Section 8.6. Agreement.~~

§ 7.2 Mediation

§ 7.2 Arbitration

§ 7.2.1 ~~Any~~ If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, dispute or other matter in question arising out of or related to a Service Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. this Agreement or a Service Agreement subject to, but not resolved by, mediation shall be subject to arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §554J and §554K, and as set forth in the Navajo Sovereign Immunity Act, as amended, at 7 N.N.C. §§1101 et seq., Such Arbitration shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Master Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration.

§ 7.2.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question. Such notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. §555

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

§ 7.2.3 ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~ award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable Navajo Nation law.

§ 7.2.4 ~~If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:~~
(Check the appropriate box.)

Arbitration pursuant to Section 7.3 of this Master Agreement

Litigation in a court of competent jurisdiction

Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 7.3 Arbitration

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

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

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

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

§ 7.3.4 Consolidation or Joinder

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

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

§ 7.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Master Agreement.

§ 7.4 The provisions of this Article 7 shall survive the termination of a Service Agreement.

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§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, ~~Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.~~ termination and for Reimbursable Expenses incurred.

...

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

...

Not Applicable

...

To be determined, if necessary, between parties.

...

(If applicable, attach an exhibit of hourly billing rates or insert them below.)
Attached as Exhibit A, DMA Hourly Billing Rates

Employee or Category	Rate (\$0.00)
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...

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

To be determined between parties if this clause is exercised.

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§ 9.4.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent (0.00 %) of the expenses incurred.

...

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

~~—%—invoice, reflecting current value of work completed.~~

...

§ 10.1 ~~Each Service Agreement shall be governed by the law of the place where the Project described in the Service Order is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.3. Navajo law.~~

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(Include other terms and conditions applicable to this Agreement.)

Under all designated Service Orders, where applicable, depending upon funding, scope and schedule, the Architect shall:

A. Work with the representatives of Dine' College to develop and design future facilities to meet the needs of the student population of the college at all locations of the college. The firm shall emphasis the 'signature' design of each campus or center.

B. Evaluate and assess facility needs of the college at each Arizona and New Mexico locations on an annual basis. Information provided will be incorporated in CIP plans for both Arizona and New Mexico campuses and centers.

C. Provide consultation and coordination to college representatives to verify future college programs that will adversely affect the facility requirements of the college.

D. Emphasize sensitivity to Navajo Cultural, Values and philosophies of the college mission statement in the designing and engineering process to all projects.

E. Develop detailed scopes of work for all major renovations projects, including electrical, mechanical, construction, and infrastructure at all sites. Scopes of work will include specifications and schematics for

each project as needed.

F. Produce customary Schematic Design, Design Development, and Construction Documents for projects as necessary based on scope outlined in each Service Order.

G. Work with the Owner in the procurement of construction-based services where needed, or act on behalf of the Owner in alternative delivery systems identified in Article 11 (H).

H. Provide additional services as are necessary to facilitate project completion based upon required timeframes established by the Owner. This may include alternative project delivery systems such as **Design-Build, Construction Manager at Risk, or Fast Track** project delivery.

I. Provide to the college, a management chart (i.e.g. gant chart) of all project of proposed designs and engineering costs.

J. Provide to the college, qualifications of key staff for the selected services to be provided.

K. Provide fully developed schematic drawings of new proposed buildings to the college. All submitted drawings will be sole property to the college.

L. Provide estimated costs to all college projects that are funded by Federal agencies.

M. Provide all meeting minutes for Design and Engineering for the purpose of transparencies to oversight of accreditation agencies.

N. Prepare and provide all pertinent documentations associated with the bid solicitation of major projects over sixty five thousand dollars.

O. Coordinate with college representatives in planning and the design of future designated building based on existing master plans of each site.

P. Deliver projects based upon agreements the College may have with external State, Tribal, Federal, or other funding agencies and their related requirements for complying with stipulations in those agreements the College may hold.

Independent Contractor. It is expressly understood that the Architect is an independent contractor. Nothing contained herein shall be construed or applied to create the relationship of employer and employee between the Owner and Architect. Unless otherwise specifically agreed in a Service Agreement, the Architect may act on behalf of the Owner in certain construction projects.

Indemnification and Hold Harmless. To the fullest extent permitted by law, Architect at its own expense shall indemnify and hold harmless Owner from and against any claims, liabilities, losses, damages, costs and expenses, including legal fees, which the Owner sustains as a result of any misconduct or any wrongful or negligent act, error or omission of the Architect that arise out of the services under this Agreement or any Service Agreement or arise out of or result from the Architect's breach of the terms of this Agreement or any Services Agreement. The Architect shall cause this indemnification to be insured under its Professional Liability Insurance Policy. This indemnification and hold harmless obligation shall survive the expiration or termination of this Agreement.

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.2 — AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

.2 Exhibits:

Exhibit A – DMA Hourly Billing Rates, dated 2020

(Insert the date of the E203-2013 incorporated into this Master Agreement.)

.3 — Exhibits:

(Clearly identify any other exhibits incorporated into this Master Agreement.)

.4 — Other documents:

(List other documents, if any, forming part of the Master Agreement.)

- .3 All the policies required by Section 3.3, and requirement that the Architect, its consultant and subcontractors must provide proof and certificates of insurance prior to the start of any work pursuant to a Service Agreement.

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Charles M. Roessel, President
Dine' College

(Printed name and title)


Dyron V. Murphy, AIA, NCARB
Principal

(Printed name, title, and license number, if required)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Dyron V. Murphy, AIA, Principal, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:56:27 ET on 10/28/2020 under Order No. 9816535259 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B121™ – 2018, Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

Principal

(Title)

October 28, 2020

(Dated)