

## **ShareBuilt Agreement for Project Shepherd Services**

This is an agreement (“Agreement”) between [Client Name], a [State] nonprofit corporation, [Client Address], EIN [Client EIN] (“Client”), and ShareBuilt, Inc., a Tennessee nonprofit corporation, 311 Monticello Rd, Franklin, TN 37064, EIN 88-2057990 (“Provider”), for Provider to serve as Project Shepherd (the “Services”) for Client for the construction of a new campus.

### **BACKGROUND**

Client intends to design and construct [Project Name] at [Project Address] (the “Project”). Client wishes to engage an Owners Representative to provide the services identified in this Agreement. Provider offers services to nonprofit organizations including providing a Project Shepherd upon request and wishes to accept the assignment as Provider for the Project. The parties agree to the following terms and conditions.

### **TERMS AND CONDITIONS**

1. **Engagement.** Client agrees to engage Provider and to compensation for Services as follows:
  - a. As a 501c3 organization, Provider will provide the Services at no cost to the Client. Client agrees to reimburse Provider for travel costs for Provider direct project costs to visit Client office or the Project site. Unless otherwise agreed, travel expenses will be driving mileage reimbursement at IRS business rates and hotels at rates equivalent to a local Hampton Inn. Reimbursable trips are those more than 50 miles one way from Franklin, TN. Meal expenses are capped at \$75.00 per day per person, for reimbursed trips only.
  - b. If able, however, Client will voluntarily donate to the Provider in support of their ongoing mission allowing Provider to serve other nonprofit organizations in a similar manner.
2. **Scope of Services.** Provider will provide the following services for the Project:
  - a. Services to be provided pursuant to this Agreement may cover the design, bidding, construction, and closeout phases of the Project, based on Project design phases for which Client has currently contracted an architect (the “Architect”). Applicable phases for the Services are noted in Exhibits A, B, C, & D that follow. In addition to the specific items listed at Exhibits A through D, the Provider may also provide other assistance as reasonably requested by Client that pertains to the Project, including assisting with litigation or other forms of dispute resolution. The Provider shall do so for no fee but in accordance with paragraph 1 above.
3. **Role of Provider.** Client and Provider do not intend this Agreement to modify the services to be provided to Client by the Project Architect pursuant to a separate contract with Client (the “Architect’s Agreement”). Rather, the intention is for Provider, through its services as Provider, to serve a distinct function on the Project, in protecting Client’s interest of receiving a cost-effective, well-constructed project with appropriate materials and systems, and in serving as a trusted advisor to Client, by acting separately and independently of the Architect, the contractors for the Project (the “Contractors”) and other parties involved in the design and construction of the Project.
4. **Delivery of Services.** Provider shall not delegate the duty of performing services under this Agreement to any other party except as provided in Section 15. The Provider will designate [Project Shepherd Name] as the Project Shepherd to deliver the Provider’s Services to the Client. It is understood that an alternative individual may serve in the role of day-to-day Project Shepherd with the prior approval of the Client and with the understanding that [Project Shepherd Name] will remain involved in an oversight role.
5. **Term and Termination.** This Agreement shall terminate upon the earlier of the following: (a) final completion of the Project; (b) such other time as may be mutually agreed upon by Client and Provider; or (c)

upon either party's delivering written notice of termination to the other party.

6. Information / Confidentiality. Client shall provide Provider access to and copies of all pertinent Project documentation and other information necessary for Provider to perform its duties under this Agreement. Provider agrees to maintain confidentiality regarding any non-public information provided to it pursuant to this Agreement.

7. Status of Provider. In providing Provider services pursuant to this Agreement, Provider will be acting as an independent contractor, not as an employee of Client. In that regard, Provider and its employees will not be eligible for any employment-related benefits or be supervised by Client, and Client will not control the means and methods by which Provider and its employees provide the Services. Provider shall be solely responsible for any and all taxes due as an independent contractor and shall indemnify and hold Client harmless for all such taxes. Provider may perform services for other Clients, but only if doing so does not interfere with its ability to perform the Services provided for herein to Client. Provider and Client acknowledge that this Agreement does not create a partnership or joint venture between them.

8. Limitations of Liability.

Client agrees, to the fullest extent permitted by law, to limit the liability of Provider and Provider's officers, directors, partners, employees, and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, relating to the Services, so that the total aggregate of such liability shall not exceed the applicable insurance coverage available at the time of settlement or judgment. Client further agrees and acknowledges that Provider shall have no liability for any special, exemplary, incidental and/or consequential damages. The parties agree that given Provider's nonprofit status and Provider's agreement to provide the Services without charge, the foregoing limitation of liability is reasonable, and a material inducement for Provider to enter into this Agreement, without which limitation it would be unable and unwilling to do so.

9. Entire Agreement.

This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties with respect to the subject matter hereof.

10. Severability.

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

11. Amendment.

This Agreement may be modified or amended in writing by mutual agreement between the parties if the writing is signed by the party obligated under the amendment.

12. Governing Law/Dispute Resolution.

This Agreement shall be construed in accordance with the laws of the State of Tennessee. The parties will attempt to resolve any dispute arising out of or relating to this Agreement through friendly negotiations amongst the parties. If the matter is not resolved by negotiation within 21 calendar days, the parties will resolve the dispute using the below Alternative Dispute Resolution (ADR) procedure.

Any controversies or disputes arising out of or relating to this Agreement will be resolved by binding arbitration under the rules of the American Arbitration Association. The arbitrator's award will be final, and judgment may

be entered upon it by any court having proper jurisdiction.

13. Notice.

Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

14. Waiver of Contractual Rights.

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

15. Assignment.

Neither party may assign or transfer this Agreement without the prior written consent of the non-assigning party, which approval shall not be unreasonably withheld.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

Client: [\[Client Name\]](#)

By: \_\_\_\_\_ Date: \_\_\_\_\_

Provider: ShareBuilt, Inc

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment A (NOT APPLICABLE or INCLUDED)**  
**Scope of Services During Pre-Construction**

**1. Evaluate and Make Recommendations on Project Options**

The Provider, in consultation with Client and the Architect, shall evaluate and make recommendations on Project options to Client. The evaluation shall identify advantages and/or disadvantages of each option regarding cost, schedule, logistics, and site development.

**2. Develop and Make Recommendations on a Detailed Project Budget**

The Provider, in consultation with Client and the Architect, shall develop and make recommendations to Client regarding a detailed Project budget that identifies all costs including construction costs, land acquisition costs, consulting fees, permit fees, testing and inspection fees, furnishings, equipment, inflation and contingencies.

**3. Cost Estimates and Detailed Cost Estimate Reviews**

The Provider shall evaluate Project cost estimates prepared by the Architect and/or the Contractor pursuant to schematic design, design development, and construction documents of the Architect's Agreement.

**4. Develop a Project Delivery Strategy**

The Provider, in consultation with Client and the Architect, shall analyze Project requirements and develop a pre-construction and construction strategy that addresses requirements for function, cost, quality, time, and logistics.

**5. Evaluate and Provide Recommendation on Proposed Project Master Schedule**

The Provider shall evaluate the Project Master Schedule submitted to Client for approval by the Architect and or Contractor and provide Client a written recommendation on whether to approve such schedule.

**6. Monitor the Project Master Schedule**

The Provider shall monitor and report on Project progress during pre-construction, recommend any appropriate updates to the Project Master Schedule, notify the Client and the Architect of any delays or problems, and recommend any corrective action necessary to recover and meet the approved schedule, including recommendations to avoid any potential cost overruns or delays caused by sequencing.

**7. Perform Value Engineering Recommendations**

Throughout the design process, the Provider shall offer recommendations to Client on possible cost efficiencies to be achieved through value engineering.

**8. Perform Constructability Reviews**

The Provider shall evaluate design documents as they are developed to avoid potential problems with constructability of the proposed design, and to minimize potential change orders relating to constructability.

**9. Evaluate Drawings and Project Manual**

The Provider shall be responsible to assist the Architect in development of front-end portion of the specifications (Division 1) to be provided to prospective bidders, and provide recommendations to Client and the Architect on contractor performance requirements in the Project Manual to promote quality, cost effectiveness, appropriate allocation of work between contractors, and compliance with the Master Project Schedule.

**10. Review and comment on Monthly Reports**

The Provider will review and comment upon the monthly reports provided by the Architect and Contractor.

**11. Conduct Design Coordination Meetings**

The Provider will participate in design coordination meetings managed by Architect on a regular basis (minimum of two per month) with Client, the Architect, and other consultants to discuss and review all items pertinent to Project design. The Provider will review notes of design meetings prepared by the Architect for Architect minutes of the meetings that will be published in a timely manner.

**12. Participate in Other Meetings and Proceedings**

Upon request of Client, the Provider shall participate in other meetings or proceedings pertaining to the Project, and unless otherwise directed by Client shall take and distribute minutes of such meetings or proceedings.

**Attachment B (NOT APPLICABLE or INCLUDED)**  
**Scope of Services During Contractor Selection**

**1. Promote Contractor and Supplier Interest**

The Provider shall identify potential contractors and suppliers appropriate for the Project and promote the Project to them, to help develop a competitive bidding environment.

**2. Create Construction Management Request for Proposal (If Applicable)**

The Provider, if requested by Client, with Architect assistance, shall develop a Request for Proposal (RFP) for Construction Management Services and manage the distribution of the RFP.

**3. Attend Pre-Proposal Conference and Confer on Responses to Pre-Proposal RFI's**

The Provider shall attend any Preproposal conference to be organized and conducted cooperatively with the Architect and shall confer with the Architect and Client on responses to questions.

**4. Confer on Evaluating Qualifications and responsiveness of Proposers.**

The Provider shall confer with the Architect and Client in evaluating whether proposers qualify.

**5. Participate in Evaluating Responses to RFP and in presentations if required.**

The Provider shall confer with the Architect and Client in evaluating responses to the RFP and in the selection of the Construction Manager based upon a mutually agreed criterion.

**6. Review Construction Contracts and Forms Submitted by Contractors**

The Provider shall review construction contracts provided to the Construction Manager.

**7. Review of Trade Contractors**

The Provider shall be involved in the review of all trade contractor bids and proposals received by the Construction Manager for inclusion in their GMP. The provider shall have the right to recommend acceptance or rejection of Trade Contractors to be included in the GMP if the Provider believes it is in the best interest of the client. All contracts ultimately shall be the responsibility of the Construction Manager and the terms of the GMP executed between the Construction Manger and Client shall govern the execution of the work.

**Attachment C (NOT APPLICABLE or INCLUDED)**  
**Scope of Services During Construction**

**1. Staff**

The Provider will maintain a qualified Project Shepherd to provide services during Construction for the Project, consisting of personnel named in paragraph 4 of the Provider Agreement which shall not change without prior approval of Client, and shall change upon reasonable request of Client: Project Shepherd shall develop a knowledge of the Contract Documents for the Project prior to the commencement of construction. Daily and weekly hours involved the project will vary from day to day and week to week and will be dictated by the needs of the project and the Client. Project Shepherd work shall primarily be remote from the project site with participation in regular project meetings being in person whenever possible and virtually otherwise.

**2. Field Observations**

Using its best efforts through staff, the Provider shall observe the work of the Construction Manager and Trade Contractors and observe the quantity and quality of materials and equipment received and stored on site, endeavoring to protect Client against defects, deficiencies, noncompliance with the Contract Documents or failures of performance by Contractors, including recommendations to avoid any potential cost overruns or delays caused by sequencing. The Provider will also evaluate whether approved remedial work has been properly performed. Furnishing such services will not make the Provider responsible for, or give the Provider control over, construction means, methods, techniques, sequences, procedures, or results, or for safety precautions or programs.

**3. Inspections and Testing**

The Provider shall make recommendations to Client and the Architect regarding inspections and testing by independent agencies, make recommendations on the procurement and selection of such agencies, coordinate the scheduling of inspections and testing by selected agencies, review inspection and test reports, make recommendations to Client and the Architect regarding inspection and test results, monitor the submittal and payment of inspection and testing agency invoices, and maintain copies of all inspection and test results. Furnishing such services will not make the Provider responsible for, or give the Provider control over, testing and inspection means, methods, techniques, sequences, procedures, or results, or for safety precautions or programs.

**4. Evaluate and Monitor Detailed Construction Schedule**

The Provider will evaluate and monitor the detailed construction schedule (and updates) developed by the Construction Manager and Trade Contractors, checking to ensure the schedule includes viable start and finish dates for procurement and construction activities and appropriate major milestones for each segment of the work. The Provider shall observe the progress of Work on the Project, promptly advise Client and the Architect of any deviations from the approved schedule or concerns with progress of the Project and make recommendations for actions by the Construction Manager to avoid or recover from any delay. The Provider shall communicate directly with the Construction Manager regarding scheduling concerns and recommendations, unless directed otherwise by the Client. The activities of the Provider relating to Project schedules and progress shall not negate in any manner the Construction Manager's obligations to meet the Project schedule and deadlines, and to otherwise comply with the Contract Documents.

**5. Monitor Coordination of Contractors**

The Provider shall monitor the coordination of trades among Contractors on the Project, promptly advise The Construction Manager regarding any concern with such coordination and make recommendations for actions to avoid or recover from coordination problems. Activities of the Provider relating to Project coordination among Contractors shall not negate in any manner the Contractors' obligations to coordinate their Work, and to otherwise comply with the Contract Documents.



**6. Participate in Resolution of Suggestions, Problems, Concerns or Questions**

The Provider shall confer with Client and the Architect, and where appropriate also the Construction Manager in assisting to resolve suggestions and any problems or concerns that arise on the Project. The Provider shall also assist Client and the Architect in addressing questions that may arise during the Project concerning the interpretation of the Contract Documents, but shall not replace the Architect as the Initial Decision-Maker (as defined in the Contract Documents) on such matters.

**7. Arrange for Client-Purchased Property**

The Provider shall be the point of contact for the Construction Manager for the delivery, storage, protection and security of any Client-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Project.

**8. Reporting Incidents**

The Provider shall immediately report to Client and the Architect any damage occurring to materials, equipment or work performed on the Project, as well as any accidents, injuries, theft or other serious incident arising on the Project.

**9. Project Documentation**

The Provider shall ensure that the Construction Manager maintains orderly files of all Project documentation, including contracts, drawings, specifications, submittals, samples, schedules, correspondence, meeting minutes, catalog data, directives, change orders, etc., and shall ensure Construction Manager provides such documentation to Client at the conclusion of the Project.

**10. Monthly Reports**

At the end of each month, or more frequently at the request of Client, the Providers shall provide a written report to Client (with a copy to the Architect), addressing in a form and level of detail satisfactory to Client (including information on schedule, budget, quality, safety, logistics, and general project information), the progress and status of the Project and any material issues or concerns. The Provider will be available to attend and present such reports at meetings of Client's Board or Project Oversight.

**11. Evaluate and Make Recommendations on Payment Applications**

The Provider shall evaluate payment applications by The Construction Manager and Architect and shall make recommendations to the Architect and Client regarding approval or disapproval of such applications, including an evaluation of the percentage of Work completed by the Construction Manager and any factors appropriate to protect Client against making overpayment to the Contractor.

**12. Attend Regular Project Meetings**

The Provider, in consultation with the Client and the Architect, will attend regular Project Meetings conducted by the Construction Manager at the job site to discuss job progress, resolve problems, and make decisions.

**13. Evaluate and Make Recommendations on Change Orders**

The Provider, in consultation with Client and the Architect, shall evaluate and make recommendations to Client and the Architect on change orders, including making investigations and recommendations on the value and validity of proposed change orders, and discussing proposed change orders with The Construction Manager and Contractors.

**14. Recommend Construction Changes**

The Provider shall evaluate work in progress and make recommendations to Client and the Architect for changes in the Project based on field conditions, improved quality, cost savings, or time savings.

**15. Assist with Any Issues Pertaining to Neighbors**

Upon request of Client, the Provider shall assist in addressing any issues that may arise concerning the Project with neighbors of Client Project.

## 16. Limitations of Authority

The Provider is NOT authorized to do any of the following, and will not do so:

- a. authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by the Architect and Client.
- b. exceed limitations of the Architect's and Client's authority as set forth in the Contract Documents.
- c. undertake any of the responsibilities of Contractor, Subcontractors, or Contractor's superintendent.
- d. issue directions relative to, or assume control over, any aspect of the means, methods, techniques, sequences, or procedures of construction, unless such advice or directions are specifically required by the Contract Documents.
- e. issue directions regarding, or assume control over, safety precautions and programs in connection with the work of Contractors.
- f. accept submittals from anyone other than the Contractors.
- g. authorize Client to occupy the Project in whole or in part.
- h. participate in specialized field or laboratory tests, or inspections conducted by others, except as specifically authorized by the Architect and Client.
- i. accept defective or nonconforming work by Contractors.
- j. stop and/or suspend work by Contractors, or reject materials, equipment and systems or other nonconforming, deficient, incomplete and unacceptable work unless authorized by the Architect and Client, except that in **EMERGENCY** situations if the Architect and Client cannot be immediately summoned, the Provider shall temporarily stop and/or suspend defective work or reject defective materials, equipment and systems until the Architect and Client can be summoned.

**Attachment D (NOT APPLICABLE or INCLUDED)**

**Scope of Services During Close-Out**

**1. Assist with Substantial Completion and Final Completion**

The Provider shall timely assist and confer with Client and the Architect regarding Substantial Completion and Final Completion procedures addressed in the Contract Documents. Among other things, the Provider shall participate in inspections of the Contractors' work, and shall assist the Architect in its duties to determine whether Substantial Completion and Final Completion have been achieved, monitor the timeliness of Substantial Completion and Final Completion submissions, assist in maximizing warranty deadlines, identify any items remaining to be completed or repaired (regardless of whether the Contractor has identified such items), and identify the cost to repair or complete remaining work. The Provider shall also continue to observe the work of Contractors until Final Completion is achieved.

**2. Coordinate Testing, Calibration, Start-Up and Training of Systems and Equipment**

The Provider shall ensure that Construction Manager coordinates and document the testing, calibration, start-up of all equipment and building systems, and training of Client personnel to operate and maintain building systems and equipment, and ensure that the Construction Manager report to Client and the Architect in writing regarding such activities.

**3. Process Operating Manuals and Warranties**

The Provider shall ensure that the Construction Manager collects and catalogs all operating and instruction manuals for equipment and building systems and all warranty documentation.

**4. Coordinate Construction Close-Out**

The Provider shall, in consultation with Client and the Architect, coordinate Construction Manager close-out activities including the completion of deficiencies, submittals of close-out documents, resolution of change orders, and recommendations for payment of retainage.

**5. Gather and Submit Project Documentation**

The Provider shall ensure that Client receives from Construction Manager all project documentation including files, records, drawings, submittals, samples, and other information in an organized and usable form.