



## Commission Memorandum

**REPORT TO:** Honorable Mayor and City Commission

**FROM:** Chuck Winn, Assistant City Manager

**SUBJECT:** Professional Architectural Services Agreement with Architecture 118, LLC for design and contract administration services for phase 2 of the Stiff Professional Building remodel.

**MEETING DATE:** June 17, 2019

**AGENDA ITEM TYPE:** Consent

**RECOMMENDATION:** Authorize City Manager to sign a Professional Architectural Services Agreement with Architecture 118 for design and contract administration services for phase 2 of the Stiff Professional Building Remodel project.

**BACKGROUND:** On March 14, 2016, the City Commission approved a construction services contract for a limited remodel of the Stiff Professional Building at 20 East Olive. That project remodeled existing underutilized space to accommodate additional staff in GIS, Engineering and Planning and improved staff efficiencies and interaction with the public. At that time the project was limited to available funding and plans were made for a larger phase 2 project to further increase efficiencies by combining community development functions (building and planning) on the same floor and construct a plans intake desk with cross trained personnel to serve the public.

Over the last two years, city staff has worked to refine the layout of the building under the leadership of new department heads. We are confident the layout being designed will maximize use of the building for additional staff and improve customer service and public interaction by combining like functions and the construction of a permit and project intake desk staffed with cross-trained personnel able to answer questions and help applicants navigate the permitting process.

In accordance with Montana law, the City used a qualification-based selection process to select Architecture 118 (A118) to provide architectural and project management services for this project. We negotiated a fee of \$85,400 for the work outlined in the scope of services contained in Exhibit A. This fee is within the expected amount for work of this type. A118 will complete the design and contract bid documents and assist city staff in bidding the project, and, assuming favorable bid numbers, will assist city staff with construction administration services.

**PROJECT TIMING:** We are anticipating a 3 month design phase and a 4-5 month construction phase during which staff will be relocated to different areas of the building as the project progresses. Remodels of this nature are often complicated due to the age of the building and

requirements to bring certain areas up to the new codes particularly as they relate to safety and accessibility requirements.

**FISCAL EFFECTS:** Funding for the project is approved in the FY2019 budget at \$656,116.00 and is divided among several funds based on attributable square footage costs.

**UNRESOLVED ISSUES:** None

**ALTERNATIVES:** As identified by the Commission.

*Attachments:*  
**Exhibit A:** *Professional Architectural Services Agreement*

Report compiled on: **06/04/2019**

## PROFESSIONAL ARCHITECTURAL SERVICES AGREEMENT

**THIS AGREEMENT** is made and entered into this 3rd day of June, 2019, by and between the **CITY OF BOZEMAN, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 121 North Rouse Street, Bozeman, Montana 59771, hereinafter referred to as “City,” and, Architecture 118, LLC, hereinafter referred to as “Architect.”

In consideration of the mutual covenants and agreements herein contained, the receipt and sufficiency whereof being hereby acknowledged, the parties hereto agree as follows:

1. **Purpose:** City agrees to hire Consultant as an independent contractor to perform for City services described in the Scope of Services attached hereto as Exhibit “A” and by this reference made a part hereof.

2. **Effective Date:** This Agreement is effective upon the date of its execution and will terminate on the 1st day of June, 2020.

3. **Scope of Work:** Consultant will perform the work and provide the services in accordance with the requirements of the Scope of Services attached hereto. For conflicts between this Agreement and the Scope of Services, unless specifically provided otherwise, the Agreement governs.

4. **Payment:** City agrees to pay Architect Eighty-Five Thousand Four-Hundred Dollars (\$85,400) for services performed pursuant to the Scope of Services. In addition, production of reproducible record drawings will be billed at the hourly rate (\$75 per hour), not to exceed One Thousand Two Hundred Dollars (\$1200). Any alteration or deviation from the described work that involves additional costs above the Agreement amount will be performed by Architect after written request by the City, and will become an additional charge over and above the contract amount. The parties must agree in writing upon any additional charges.

5. **Consultant’s Representations:**

To induce City to enter into this Agreement, Architect makes the following representations:

a. Architect has familiarized itself with the nature and extent of this Agreement, the Scope of Services, and with all local conditions and federal, state and local laws, growth policies, adopted plans of the City, ordinances, rules, and regulations that in any manner may affect cost, progress or performance of the Scope of Services.

b. Architect represents and warrants to City that it has the experience and ability to perform the services required by this Agreement; that it will perform said services in a professional, competent and timely manner and with diligence and skill; that it has the power to enter into and perform this Agreement and grant the rights granted in it; and that its performance of this Agreement shall not infringe upon or violate the rights of any third party, whether rights of copyright, trademark, privacy, publicity, libel, slander or any other rights of any nature whatsoever, or violate any federal, state and municipal laws. The City will not determine or exercise control as to general procedures or

formats necessary to have these services meet this warranty.

**6. Independent Contractor Status:** The parties agree that Architect is an independent contractor for purposes of this Agreement and is not to be considered an employee of the City for any purpose. Architect is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Architect is not authorized to represent the City or otherwise bind the City in any dealings between Architect and any third parties.

Architect shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Architect shall maintain workers' compensation coverage for all members and employees of Architect's business, except for those members who are exempted by law.

Architect shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

**7. Indemnity/Waiver of Claims/Insurance:** For other than professional services rendered, to the fullest extent permitted by law, Architect agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of Architect or Architect's agents or employees.

For the professional services rendered, to the fullest extent permitted by law, Architect agrees to indemnify and hold the City harmless against claims, demands, suits, damages, losses, and expenses, including reasonable defense attorney fees, to the extent caused by the negligence or willful misconduct of the Architect or Architect's agents or employees.

Architect also waives any and all claims and recourse against the City or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except "responsibility for his own fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent" as per 28-2-702, MCA.

Should City be required to bring an action against the Architect to assert its right to defense or indemnification under this Agreement or under the Architect's applicable insurance policies required below the City shall be entitled to recover reasonable costs and attorney fees incurred in asserting its right to indemnification or defense but only if a court of competent jurisdiction determines the Architect was obligated to defend the claim(s) or was obligated to indemnify the City for a claim(s) or any portion(s) thereof.

The above obligations shall survive termination of this agreement.

In addition to and independent from the above, Architect shall secure insurance coverage acceptable to the City and furnish to the City an accompanying certificate of insurance issued by a company authorized to do business in the State of Montana in amounts not less than as follows:

- Workers' Compensation - statutory
- Employers' Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Commercial General Liability - \$1,000,000 per occurrence; \$2,000,000 annual aggregate
- Automobile Liability - \$1,000,000 property damage/bodily injury; \$2,000,000 annual aggregate
- Professional Liability - \$1,000,000 per claim; \$2,000,000 annual aggregate

The City of Bozeman, its officers, agents, and employees, shall be endorsed as an additional or named insured on a primary non-contributory basis on both the Commercial General and Automobile Liability policies. The insurance and required endorsements must be in a form suitable to City and shall include no less than a thirty (30) day notice of cancellation or non-renewal. The City must approve all insurance coverage and endorsements prior to the Architect commencing work.

**8. Professional Service:** Architect agrees that all services and work performed hereunder will be accomplished in a professional manner.

**9. Compliance with Laws:** Architect agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes, and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Architect agrees to purchase a City business license.

**10. Nondiscrimination:** The Architect will have a policy to provide equal employment opportunity in accordance with all applicable state and federal anti-discrimination laws, regulations, and contracts. The Architect will not refuse employment to a person, bar a person from employment, or discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, color, religion, creed, political ideas, sex, age, marital status, national origin, actual or perceived sexual orientation, gender identity, physical or mental disability, except when the reasonable demands of the position require an age, physical or mental disability, marital status or sex distinction. The Architect shall be subject to and comply with Title VI of the Civil Rights Act of 1964; Section 140, Title 2, United States Code, and all regulations promulgated thereunder. The Architect shall require these nondiscrimination terms of its sub-consultants providing services under this agreement.

**11. Default and Termination:** If either party fails to comply with any condition of this Agreement at the time or in the manner provided for, the other party, at its option, may terminate this Agreement and be released from all obligations if the default is not cured within ten (10) days after

written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this Agreement.

**12. Modification and Assignability:** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written Agreement, may be considered valid or binding. This Agreement may not be enlarged, modified or altered except by written agreement signed by both parties hereto. The Architect may not subcontract or assign Architect's rights, including the right to compensation or duties arising hereunder, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this Agreement.

**13. Ownership and Publication of Materials:** All reports, information, data, and other materials prepared by the Architect pursuant to this Agreement, except those separately identified in the Scope of Services or in other written agreements between the parties, are jointly owned by the Architect and the City. The City has authority to release, publish or otherwise use, in whole or part, reports, information, data and other materials prepared by Architect pursuant to this Agreement, except those separately identified in the Scope of Services or in other written agreements between the parties. Any re-use without written verification or adaptation by the Architect for the specific purpose intended will be at the City's sole risk and without liability or legal exposure to the Architect. No material produced in whole or in part under this Agreement may be copyrighted or patented in the United States or in any other country without the prior written approval of the City.

**14. Liaison:** City's designated liaison with Architect is Mike Gray, Project Manager and Architect's designated liaison with City is Scott Hedglin, Principal.

**15. Applicability:** This Agreement and any extensions hereof shall be governed and construed in accordance with the laws of the State of Montana.

**16. Reports/Accountability/Public Information:** Architect agrees to develop and/or provide documentation as requested by the City demonstrating Architect's compliance with the requirements of this Agreement. Architect shall allow the City, its auditors, and other persons authorized by the City to inspect and copy its books and records for the purpose of verifying that the reimbursement of monies distributed to Architect pursuant to this Agreement was used in compliance with this Agreement and all applicable provisions of federal, state, and local law. The Architect shall not issue any statements, releases or information for public dissemination without prior approval of the City.

**17. Non-Waiver:** A waiver by either party any default or breach by the other party of any terms or conditions of this Agreement does not limit the other party's right to enforce such term or conditions or to pursue any available legal or equitable rights in the event of any subsequent default or breach.

**18. Attorney's Fees and Costs:** That in the event it becomes necessary for either Party of this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs, including fees, salary, and costs of in-house counsel to include City Attorney.

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument the day and year first above written.

**CITY OF BOZEMAN, MONTANA**

**ARCHITECTURE 118, LLC**

By \_\_\_\_\_  
**Andrea Surratt, City Manager**

By \_\_\_\_\_  
**Scott Hedglin  
Principal**

\_\_\_\_\_  
**APPROVED AS TO FORM:**

By \_\_\_\_\_  
**Greg Sullivan, Bozeman City Attorney**

## EXHIBIT A

### SCOPE OF SERVICES for Stiff Professional Building

A118: #19-022

Date: May 10, 2019

**Project Scope:**

Summary: Renovation of professional office space based on Owner-provided drawings and in accordance with IEBC Level 3 Alteration. Existing structural system assumed adequate. Existing sprinkler system assumed adequate (head relocation only). 3 floors (approx 7800 sf each).

Known Challenges: Maintain operations in occupied building. Phased approach is likely. Large potential for scope creep.

Anticipated Consultants:  civil  structural (west ext. stair only)  mech/plumb  electrical  environmental

**Project Schedule:** 3-4 month design phase, 4-5 month construction phase.

**Project Budget:** \$700,000 (total current project budget). City anticipates needing more.

**Services:** Below (as discussed with Chuck Winn & Mike Gray on 5/7/19). Modified for west stair modifications, south entrance coordination, and hazardous materials work plan.

<input checked="" type="checkbox"/> Pre-Design	<input checked="" type="checkbox"/> concepts: 1 <input type="checkbox"/> feasibility estimate <input checked="" type="checkbox"/> existing conditions	<input checked="" type="checkbox"/> meetings/notes: 1 <input checked="" type="checkbox"/> bldg. code review <input type="checkbox"/> facility cond inventory	<input checked="" type="checkbox"/> haz mat invest/workpln <input checked="" type="checkbox"/> accessibility review <input type="checkbox"/> other:	<input type="checkbox"/> programming <input type="checkbox"/> printing
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<input checked="" type="checkbox"/> Schematic Design	<input checked="" type="checkbox"/> drawings <input type="checkbox"/> estimate (SF based) <input type="checkbox"/> other:	<input checked="" type="checkbox"/> MEP narrative <input checked="" type="checkbox"/> owner review mtg: 1	<input type="checkbox"/> specs (book or dwgs) <input type="checkbox"/> client admin tasks	<input type="checkbox"/> meetings/notes: <input checked="" type="checkbox"/> printing (2 sets)
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<input checked="" type="checkbox"/> Design Development	<input checked="" type="checkbox"/> drawings <input checked="" type="checkbox"/> owner review mtg: 1	<input checked="" type="checkbox"/> outline specs (book) <input type="checkbox"/> client admin tasks	<input checked="" type="checkbox"/> meetings/notes: 1 <input checked="" type="checkbox"/> printing (2 sets)	<input checked="" type="checkbox"/> estimate (itemized) <input checked="" type="checkbox"/> other: phasing plan
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<input checked="" type="checkbox"/> Construction Documents	<input checked="" type="checkbox"/> drawings <input checked="" type="checkbox"/> owner review mtg: 1	<input checked="" type="checkbox"/> specs (book) <input type="checkbox"/> client admin tasks	<input checked="" type="checkbox"/> meetings/notes: 2 <input checked="" type="checkbox"/> printing (2 sets)	<input checked="" type="checkbox"/> estimate (itemized) <input type="checkbox"/> other:
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<input checked="" type="checkbox"/> Bid	<input checked="" type="checkbox"/> pre-bid meeting/notes <input checked="" type="checkbox"/> advisement <input checked="" type="checkbox"/> submit to exchanges	<input checked="" type="checkbox"/> substitutions <input type="checkbox"/> value engineering <input checked="" type="checkbox"/> planholder's list	<input checked="" type="checkbox"/> addenda <input checked="" type="checkbox"/> permit set submittal <input type="checkbox"/> other:	<input type="checkbox"/> bid opening <input type="checkbox"/> printing
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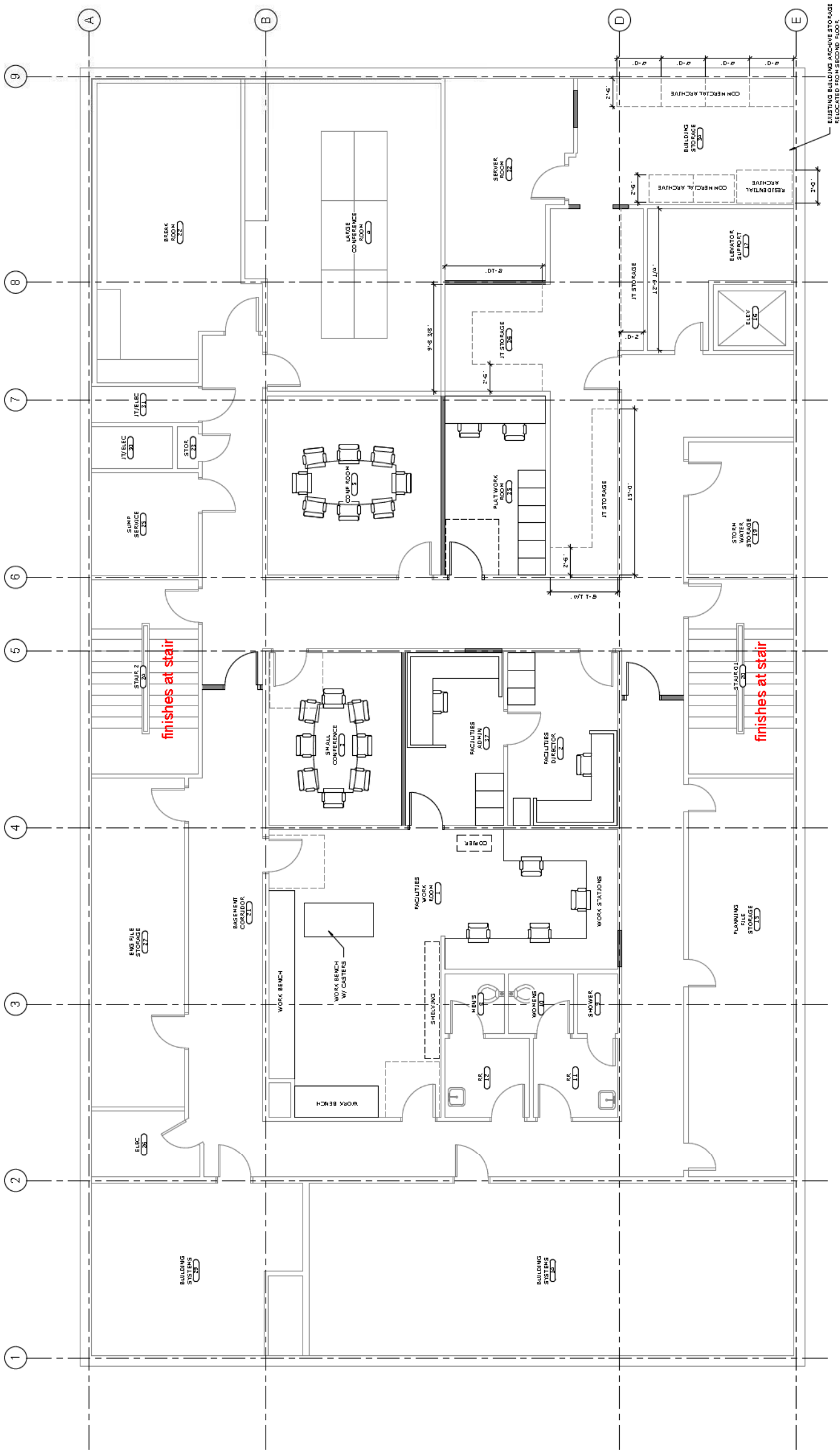
<input checked="" type="checkbox"/> Contract Admin	<input checked="" type="checkbox"/> submittal review <input checked="" type="checkbox"/> sub comp mtg/notes <input type="checkbox"/> testing & inspections	<input checked="" type="checkbox"/> meetings: 10 <input checked="" type="checkbox"/> final review mtg/notes <input type="checkbox"/> other:	<input checked="" type="checkbox"/> notes <input type="checkbox"/> scope changes	<input checked="" type="checkbox"/> observation reports <input type="checkbox"/> printing
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<input checked="" type="checkbox"/> Closeout	<input checked="" type="checkbox"/> demonstration <input checked="" type="checkbox"/> record drawings	<input type="checkbox"/> training <input type="checkbox"/> other:	<input type="checkbox"/> notes	<input checked="" type="checkbox"/> O&M manual review
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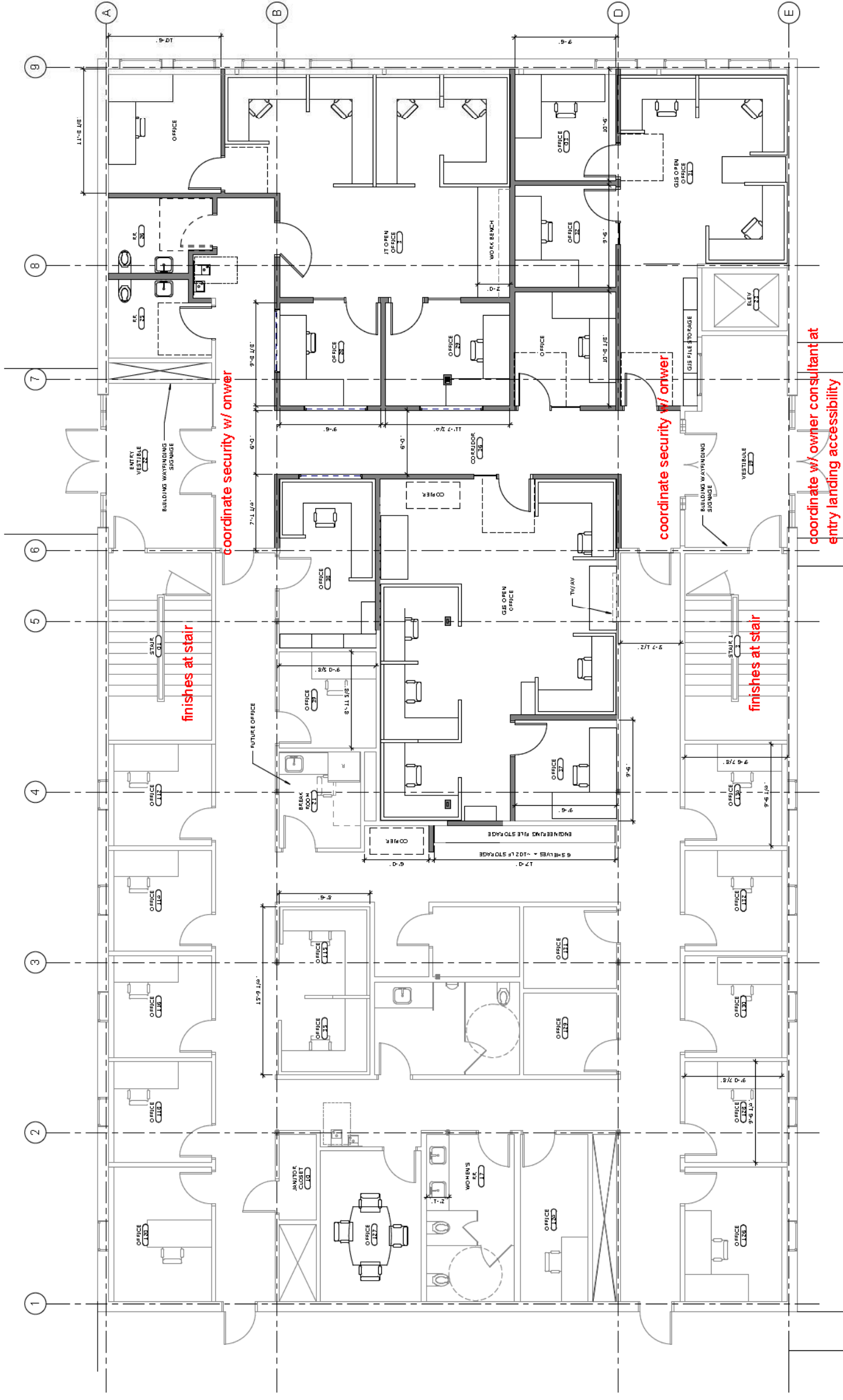
<input checked="" type="checkbox"/> Warranty	<input type="checkbox"/> site visit	<input type="checkbox"/> report	<input type="checkbox"/> follow-up	<input type="checkbox"/> other:
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<input type="checkbox"/> Additional	<input type="checkbox"/> geotechnical <input type="checkbox"/> owner standards <input type="checkbox"/> end-user mgmt	<input type="checkbox"/> survey <input type="checkbox"/> div 0 spec review <input type="checkbox"/> post-occupancy eval	<input checked="" type="checkbox"/> reimbursables <input type="checkbox"/> AHJ reviews (e.g. fire) <input type="checkbox"/> other:	<input type="checkbox"/> FF&E <input type="checkbox"/> AHJ beyond limits
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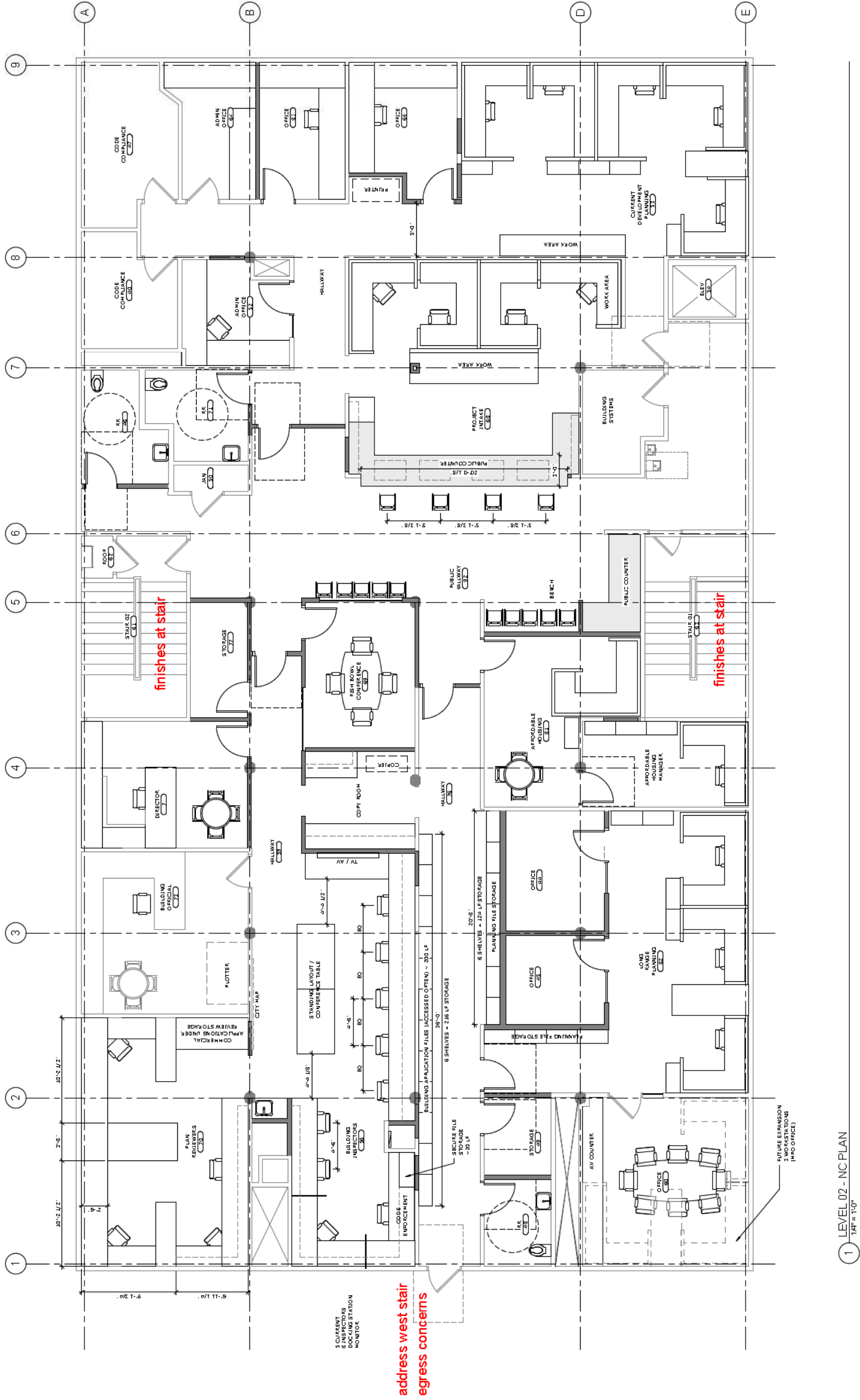


1 LEVEL 00 - NC PLAN  
 1/4" = 1'-0"



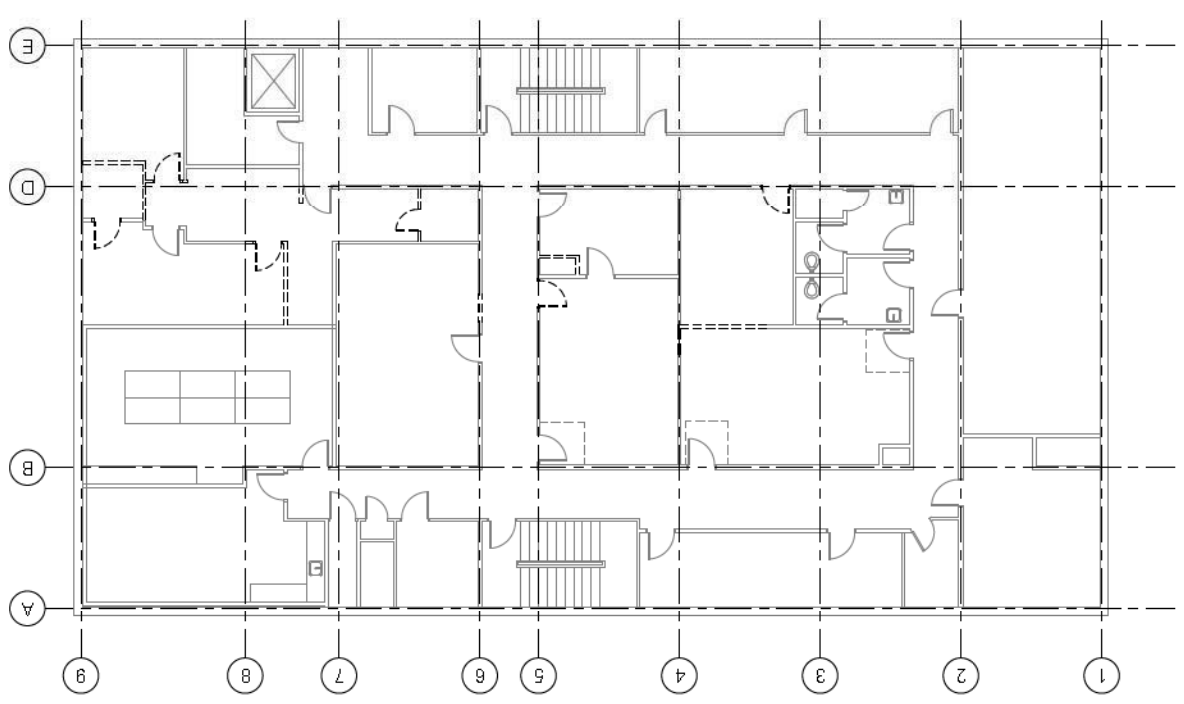
info to be provided by owner:  
 - list of departments by floor & department staff/workstations  
 - list of department equipment & furnishings (with dimensions)

1 LEVEL 01 - NC PLAN  
 1/4" = 1'-0"

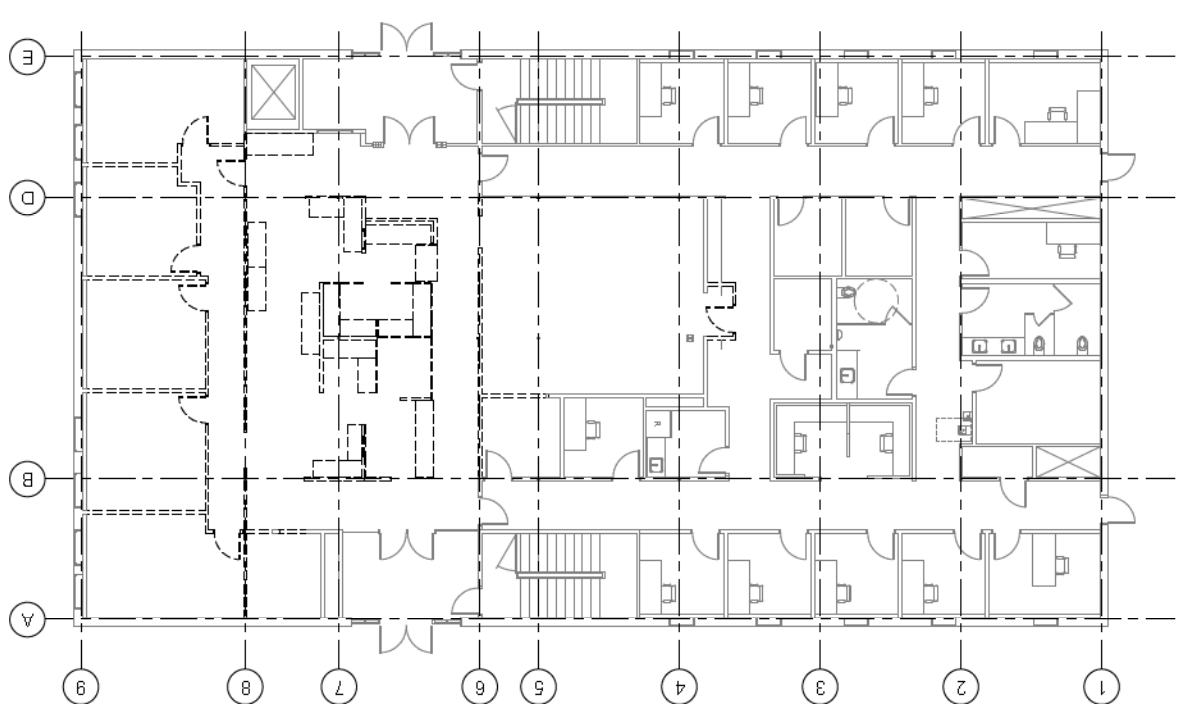


1 LEVEL 02 - NC PLAN  
 1/4" = 1'-0"

0 LEVEL 00 - DEMO PLAN  
1/8" = 1'-0"



1 LEVEL 01 - DEMO PLAN  
1/8" = 1'-0"



2 LEVEL 02 - DEMO PLAN  
1/8" = 1'-0"

