

**AN ORDINANCE APPROVING THE CONTRACT WITH HOEFER WELKER, LLC FOR DESIGN SERVICES RELATED TO A NEW POLICE BUILDING AND AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT.**

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**WHEREAS**, the City of Branson, Missouri, desires to contract with Hoefer Welker, LLC for design services related to a new Police Building; and

**WHEREAS**, staff recommends entering into an agreement with Hoefer Welker, LLC; and

**WHEREAS**, the Board of Aldermen desires to approve the contract.


**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:**

Section 1: The Board of Aldermen hereby approves the contract with Hoefer Welker, LLC for design services related to a Police Building and authorizes the Mayor to execute the contract in the form attached as Exhibit "1" in the amount not to exceed \$1,048,540.00.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 28<sup>th</sup> day of February, 2023.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri, this 14<sup>th</sup> day of March, 2023.

  
Larry D. Milton  
Mayor

ATTEST:

  
Hillary Briand  
City Clerk

APPROVED AS TO FORM:

/s/ Bridget M. Findley #72572 02/22/2023  
Interim City Attorney



# **AIA® Document B101® – 2017**

## **Standard Form of Agreement Between Owner and Architect**

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty-Three  
(In words, indicate day, month and year.)

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

City of Branson, MO  
110 W Maddux, Suite 310, Branson, MO 65616  
Telephone Number: 417.337.8559

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

Hoefer Welker, LLC  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, KS 66211  
Telephone Number: 913.307.3700

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

Branson Police and Fire Administration  
Branson, MO  
Renovation of White House Theatre  
Facility to include approximately 35,000 square feet of space for police department, fire administration, emergency operations center, and dispatch

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.

## TABLE OF ARTICLES

- |  |    |                                      |
|--|----|--------------------------------------|
|  | 1  | INITIAL INFORMATION                  |
|  | 2  | ARCHITECT'S RESPONSIBILITIES         |
|  | 3  | SCOPE OF ARCHITECT'S BASIC SERVICES  |
|  | 4  | SUPPLEMENTAL AND ADDITIONAL SERVICES |
|  | 5  | OWNER'S RESPONSIBILITIES             |
|  | 6  | COST OF THE WORK                     |
|  | 7  | COPYRIGHTS AND LICENSES              |
|  | 8  | CLAIMS AND DISPUTES                  |
|  | 9  | TERMINATION OR SUSPENSION            |
|  | 10 | MISCELLANEOUS PROVISIONS             |
|  | 11 | COMPENSATION                         |
|  | 12 | SPECIAL TERMS AND CONDITIONS         |
|  | 13 | SCOPE OF THE AGREEMENT               |

### ARTICLE 1 INITIAL INFORMATION

*(Paragraphs deleted)*

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Renovation of White House Theatre - Facility to include approximately 35,000 square feet of space for police department, fire administration, emergency operations center, and dispatch. Potential removal of fountain, new building entrance, and upgraded plaza.

*(Paragraphs deleted)*

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

To be determined as part of the Project

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

Refer to Exhibit A

Init.

*(Paragraph deleted)*

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Construction Document completion: November 30, 2023

.2 Construction commencement date:

January 31, 2024

.3 Substantial Completion date or dates:

December 1, 2024

.4 Other milestone dates:

*(Paragraphs deleted)*

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

*(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

Design, Bid, Build

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

NA

*(Paragraphs deleted)*

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address, and other contact information.)*

Keith Francis, Director of Public Works  
110 W Maddux St, Ste 310, Branson, MO 65616  
Telephone Number: 417.337.8559  
Fax Number: 417.337.8181

Email Address: kfrancis@bransonmo.gov

Eric Schmitt, Police Chief  
110 W Maddux St, Ste 100, Branson, MO 65616  
Telephone Number: 417.334.3300

Email Address: eschmitt@bransonmo.gov

*(Paragraphs deleted)*

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's

Init.

submittals to the Owner are as follows:

*(List name, address, and other contact information.)*

*(Paragraphs deleted)*

§ 1.1.9 The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

by Architect's Civil Engineering consultant as part of allowance for Supplemental Services

.2 Civil Engineer:

by Architect as part of its Supplemental Services

.3 Other, if any:

*(List any other consultants and contractors retained by the Owner.)*

*(Paragraphs deleted)*

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

*(List name, address, and other contact information.)*

Ken Henton

11460 Tomahawk Creek Parkway, Suite 400

Leawood, KS 66211

Telephone Number: 913-307-3700

Mobile Number: 816.536.2731

Email Address: ken.henton@hoeferwelker.com

*(Paragraphs deleted)*

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:

*(List name, legal status, address, and other contact information.)*

*(Paragraphs deleted)*

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

J&S Structural Engineers, P.A.

Kim Jones, PE

7302 W. 145th Terrace, Overland Park, KS 66223

Telephone Number: 913.549.4701

.2 Mechanical, Electrical, and Plumbing Engineer:

Hoefer Welker, LLC

Jeremy Hoefer, P.E.

Init.

11460 Tomahawk Creek Parkway, Suite 400, Leawood, KS 66211  
Telephone Number: 913-307-3700

*(Paragraphs deleted)*

§ 1.1.11.2 Consultants retained under Supplemental Services:

1 Civil Engineer:

Rozell Engineering Company, Inc.  
Eric Hodge, P.E.  
2404 State Highway 248, Suite 4, Branson, MO 65616  
Telephone Number: 417.334.4141

.2 Landscape Architect:

Landworks Studio  
Carissa McMullen  
102 South Cherry Street, Olathe, Kansas 66061  
Telephone Number: 913.780.6707

§ 1.1.12 Other Initial Information on which the Agreement is based:

NA

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 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, 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 2 ARCHITECT'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

*(Paragraph deleted)*

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§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

*(Paragraph deleted)*

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

*(Paragraphs deleted)*

§ 2.5 The Architect shall maintain the following insurance until termination of this 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 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2,000,000.00 ) for each occurrence and Four Million Dollars and Zero Cents (\$ 4,000,000.00 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 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.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

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

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

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

*(Paragraphs deleted)*

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

Init.

§ 3.1.2 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, and shall not be responsible for, the accuracy, completeness, and timeliness of, 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.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall not be responsible for any fees associated with obtaining necessary permits or approvals.

### § 3.2 Schematic Design Phase Services

*(Paragraphs deleted)*

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

Init.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner a preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and shall not proceed to the Design Development Phase without the Owner's written approval.

### § 3.3 Design Development Phase Services

*(Paragraphs deleted)*

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

§ 3.3.2 The Architect shall update the preliminary estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, review with the Owner of any adjustments to the estimate of the Cost of the Work and shall not proceed to the Construction Documents Phase without the Owner's written approval.

### § 3.4 Construction Documents Phase Services

*(Paragraphs deleted)*

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect may, at the request of the Owner, assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the preliminary estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

Init.

## **§ 3.5 Procurement Phase Services**

### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and (4) awarding and preparing contracts for construction.

### **§ 3.5.2 Competitive Bidding**

*(Paragraphs deleted)*

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents, in electronic format, to prospective bidders;
- .2 participating in a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 participating in the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 3.5.3 Negotiated Proposals**

*(Paragraphs deleted)*

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents, in electronic format, to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 3.5.3.3** If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

*(Paragraphs deleted)*

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

Init.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment, or sixty (60) days following the issuance of the Certificate of Substantial Completion, whichever is earlier.

### § 3.6.2 Evaluations of the Work

*(Paragraphs deleted)*

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, as required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Contractor

*(Paragraphs deleted)*

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

Init.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.4 Submittals**

*(Paragraphs deleted)*

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

**§ 3.6.5 Changes in the Work**

*(Paragraphs deleted)*

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

**§ 3.6.6 Project Completion**

*(Paragraphs deleted)*

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

Init.

- 4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections may be conducted with the Owner, if requested, to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Programming	Architect, as part of Predesign services
§ 4.1.1.2 Multiple preliminary designs	Not Provided
§ 4.1.1.3 Measured drawings	Not provided
§ 4.1.1.4 Existing facilities surveys	Architect, as part of Predesign services
§ 4.1.1.5 Site evaluation and planning	Architect, as part of Predesign services
§ 4.1.1.6 Building Information Model management responsibilities	Not provided (Basic BIM model provided)
§ 4.1.1.7 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.8 Civil engineering	Architect, as part of Supplemental Services
§ 4.1.1.9 Landscape design	Architect, as part of Supplemental Services
§ 4.1.1.10 Architectural interior design	Architect, as part of Basic Services
§ 4.1.1.11 Value analysis	Not provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect, as part of Supplemental Services
§ 4.1.1.13 On-site project representation	Not provided
§ 4.1.1.14 Conformed documents for construction	Not provided
§ 4.1.1.15 As-designed record drawings	Not provided
§ 4.1.1.16 As-constructed record drawings	Per Architect's allowance

§ 4.1.1.17	Post-occupancy evaluation	Not provided
§ 4.1.1.18	Facility support services	Not provided
§ 4.1.1.19	Tenant-related services	Not provided
§ 4.1.1.20	Architect's coordination of the Owner's consultants	Architect, as part of Basic Services
§ 4.1.1.21	Telecommunications/data design	Architect, as part of Basic Services, wiring only
§ 4.1.1.22	Security evaluation and planning	Architect, as part of Basic Services
§ 4.1.1.23	Commissioning	Architect, as part of Supplemental Services
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	Not provided
§ 4.1.1.25	Fast-track design services	Not Provided
§ 4.1.1.26	Multiple bid packages	Not Provided
§ 4.1.1.27	Historic preservation	Not Provided
§ 4.1.1.28	Furniture, furnishings, and equipment design	Architect, as part of Optional Services
§ 4.1.1.29	Other services provided by specialty Consultants	
	.1 Low Voltage design services	Architect, as part of Basic Services
	.2 Medical Equipment planning services	Not provided
	.3 ATRP consulting services	Not Provided
	.4 Kitchen / Kitchen Equipment design services	Not Provided
	.5 Audio-Visual design services	Architect, as part of Basis Services
	.6 Acoustical design services	Not provided
	.7 Physicist consulting services	Not Provided
§ 4.1.1.30	Other Supplemental Services	
	.1 Professional models or renderings	Not provided – BIM Model Renderings only
	.2 Printing of documents for Bid Phase purposes	Not provided
	.3 Field Observation Reports during site visits	Architect, as part of Basic Services

(Table deleted)

(Paragraphs deleted)

#### § 4.1.2 Description of Supplemental Services

(Paragraphs deleted)

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

None

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

NA

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

Init.

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

*(Paragraphs deleted)*

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following 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;
- 10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- 11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- 1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- 2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- 3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- 4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- 5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- 1 If more than 30% of the submittals require more than one review
- 2 One ( 1 ) visit to the site each month, up to 12 total visits, by the Architect during construction
- 3 One ( 1 ) inspection of the Work to determine whether the Work is substantially complete in accordance with the requirements of the Contract Documents
- 4 One ( 1 ) inspection of the Work to determine final completion.

Init.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

*(Paragraph deleted)*

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraph deleted)*

§ 5.4 Intentionally deleted.

§ 5.5 Intentionally deleted.

*(Paragraph deleted)*

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

*(Paragraph deleted)*

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

*(Paragraphs deleted)*

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

Init.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 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 COST OF THE WORK

*(Paragraphs deleted)*

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit, as well as contingencies for changes in the Work. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, or financing; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;

Init.

- .3 terminate in accordance with Article 9;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise, the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

*(Paragraphs deleted)*

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 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 this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the 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 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 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 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party 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.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

*(Paragraphs deleted)*

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case, not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 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. 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.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 8.2 Mediation

*(Paragraphs deleted)*

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this 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.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation. A request for mediation shall be made in writing, delivered to the other party to this 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.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box.)*

- ☐ Arbitration pursuant to Section 8.3 of this Agreement
- ☒ Litigation in a court of competent jurisdiction in the county where the project is located
- ☐ 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.

## § 8.3 Not Used

*(Paragraphs deleted)*

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

Init.

## ARTICLE 9 TERMINATION OR SUSPENSION

*(Paragraphs deleted)*

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the 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.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 Not used.

§ 9.6 If the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In the event of termination not the fault of the Architect, the Owner shall pay to the Architect the following fees: *(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 Termination Fee:

Twenty percent (20%) of Architect's unbilled compensation.

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

Twenty percent (20%) of Architect's unbilled compensation.

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

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

*(Paragraphs deleted)*

§ 10.1 This Agreement shall be governed by the law of the place where the Project 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 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

Init.

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner shall advise the Architect of any known or suspected hazardous substances on or around the project site. If the Architect observes or suspects the existence of hazardous materials during the performance of its services, the Architect, at its option, may suspend services and notify the client of the condition. If services are suspended, they will resume only after the Owner obtains a written report from a qualified examiner that the site is free and clear of hazardous substances. The Architect shall not be liable for any cost and/or schedule delay during a suspension of services due to hazardous materials.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information 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 10.8.

§ 10.9 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.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum  
(Insert amount)

Init.

Refer to Exhibit A

.2 Percentage Basis- Basic Services  
(Insert percentage value)

Seven and seventy five hundredths (7.75 ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6. Architect's lump sum fee identified above for Basic Services shall be adjusted should Cost of the Work exceed \$7,500,000.

.3 Other  
(Describe the method of compensation)

NA

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

As outlined in Exhibit A or as negotiated lump sum fee based on required scope of services to be determined prior to initiation of associated services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)

Negotiated lump sum fee based on required scope of services to be determined prior to initiation of associated services.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

As outlined in Exhibit A or as negotiated lump sum fee based on required scope of services to be determined prior to initiation of associated services

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Thirty	percent (	30	%)
Construction Documents Phase	Thirty	percent (	30	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on

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those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' annual review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category	Rate (\$0.00)
Principal	\$315
Architect – Sr. Project Manager	\$210
Architect – Sr. Project Architect	\$170
Architect – Sr. Arch. Designer	\$150
Architect – Project Manager	\$180
Architect – Project Architect	\$130
Architect – Arch. Designer	\$105
Interior Design – Director	\$190
Interior Design – Sr. Interior Designer	\$150
Interior Design – Staff	\$105
EPS – Director	\$220
EPS – Sr. MEP Engineer	\$170
EPS – MEP Engineer	\$150
EPS – MEP Engineering Support	\$105
EPS – MEP BIM Support	\$105
Support Staff	\$ 85

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

#### § 11.8 Compensation for Reimbursable Expenses

*(Paragraphs deleted)*

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 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 consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred. Reimbursable expenses shall not exceed the amount identified in Exhibit A, without authorization from the Owner.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:  
*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

NA

§ 11.10 Payments to the Architect  
*(Paragraphs deleted)*

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of NA (\$ NA ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments  
*(Paragraphs deleted)*

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Forty Five (45 ) 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.)*

18 % per annum

§ 11.10.2.2 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.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

12.1 Design Contingency. Owner and Architect agree that certain increased costs and changes may be required and are anticipated due to omissions, errors or inconsistencies in drawings and specifications prepared by Architect. Therefore, Owner agrees to set aside a reserve in the amount of five percent (5%) of the estimated Cost of the Work as a contingency to be used, as needed, to pay for any such increased costs and changes. Owner agrees to make no claim against Architect or its consultants with respect to any increased cost within this contingency amount. If costs due to changes resulting from design errors, omissions or inconsistencies exceed the contingency, then Architect shall be responsible for costs incurred by Owner above that sum but only to the extent caused by Architect's negligent acts, errors or omissions. Cost increases as a result of Owner requests made after construction documents are issued for permit, changes in governmental agency requirements after previous approval, unforeseen site conditions and including any tariffs applied are not costs due to errors, omissions or inconsistencies. In no event shall Architect be responsible for direct costs that Owner would have incurred in the construction contract but for the Architect's error or omission.

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**12.2 Precedence.** This Agreement shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, verbal discussions or like document or conversation regarding the Architect's services.

**12.3 Severability.** If any of the provisions contained in these terms and conditions are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

**§ 12.4: Compliance with laws.** The Architect shall comply with all applicable ordinances and other laws and regulations, Federal, State and any political subdivisions thereof, including but not limited to, unemployment and workers' compensation, occupational safety, equal employment and affirmative action and wage and price laws insofar as applicable to the performance of the Agreement. In the event of a conflict between laws, codes and regulations of various governmental entities having jurisdiction over the Scope of Services, the Architect shall notify the Owner of the nature and impact of such conflict.

**§ 12.5: Indemnification.** To the fullest extent permitted by law, the Architect agrees to indemnify and hold harmless the Owner, its officers, engineers, and employees from and against liabilities, damages, losses, including costs and reasonable attorneys' fees where recoverable by law, for or on account of any kind of injury to person, bodily or otherwise, or death, or damage to or destruction of property, or any other circumstances, sustained by the Owner or others, arising from breach of the Agreement or out of services and operations, but only to the extent negligently performed hereunder by the Architect, or damages relating thereto, and including but not limited to the Owners' reliance on or use of the services provided by the Architect under the terms of this Agreement. The Architect shall not be liable for any loss or damage to the extent they are attributable to the negligence of the Owner. To the extent required by law to enforce this provision, Architect agrees that this indemnification requires Architect to obtain insurance in amounts specified herein.

**§ 12.6: Non-appropriation.** Notwithstanding any provision herein to the contrary, the Owner is obligated only to make the payments set forth in the attached Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during the Owners' then current fiscal year at the discretion of the Owner. If no funds are appropriated otherwise made legally available to make the required payments for this Agreement during the next occurring fiscal year, this Agreement will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of the Owner to appropriate funds for this Agreement in any subsequent fiscal year shall not be deemed a breach of this Agreement by any party. If applicable, this Agreement may be annually renewed at each fiscal year by inclusion of specific appropriation for this Agreement, from year to year not to exceed the maximum renewal period or term as set forth in the Agreement.

**§ 12.7: Compliance with State Immigration Statutes.** As a condition of this Agreement, the Architect shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Agreement. The Architect shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Agreement. The Architect shall not be required to provide these affidavits to the Owner if such affidavits have been previously provided to the Owner within the past year. All words in this paragraph shall have the definitions as provided in §283.525, RSMo.

## ARTICLE 13 SCOPE OF THE AGREEMENT

*(Paragraph deleted)*

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

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

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 Intentionally deleted.

- .3 Exhibits:

*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

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☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this agreement.)

☒ Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

Exhibit A – Design Service and Fee Summary

4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

Architect's standard Electronic Document and BIM Release agreements, included by reference

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

CITY OF BRANSON, MISSOURI

HOEFER WELKER

\_\_\_\_\_  
Larry D. Milton, Mayor

DocuSigned by:

Ken Henton  
3D7EF3C83A0C4DF  
Ken Henton, AIA, NCARB

2/16/2023

(SEAL)

(SEAL)

Attest: \_\_\_\_\_  
Hillary Briand  
City Clerk

Attest: \_\_\_\_\_

Address for giving notices  
110 W. Maddux  
Branson, MO 65616

Address for giving notices  
11460 Tomahawk Creek Parkway, Suite 400  
Leawood, KS 66211

Approved as to Form:

DocuSigned by:  
Bridget M. Findley #725722 2/16/2023  
441844DD323C4C3...  
Interim City Attorney

(Table deleted)(Paragraphs deleted)

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## ***Certification of Document's Authenticity***

***AIA® Document D401™ – 2003***

I, Chris Andersen, 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 15:12:58 CT on 02/15/2023 under Order No. 2114287277 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

*Ken Henton*

3D75F3C83A8C4DF...  
(Signed)

Partner

(Title)

2/16/2023

(Dated)

**Branson White House Theater Conversion**

2/13/2023

**Exhibit A**

		TOTAL	REMARKS
<b>PRE DESIGN SERVICES</b>			
Space Needs Assessment		32,000	Police, Fire Admin., Training/EOC
Kick-off			Review Org. Charts, initial space needs conversation
Tour Existing Police Station			Police only
Tour Whitehouse Theater			
Tours in Kansas City			Police only
Develop Space Needs Program			
Site Analysis		8,500	Complete initial services
Building Model Completion		24,000	Complete initial services, identify façade repairs
Master planning		12,000	
Range Cost Estimate		6,400	
<b>Phase Total</b>	<b>\$</b>	<b>82,900</b>	
<b>BASIC SERVICES</b>			
		<b>620,000</b>	<b>7.75%</b>
Card Access			included
CCTV			included
AV			included
IT Infrastructure			included
Furniture Layouts on Plans			included
<b>ADDITIONAL SERVICES</b>			
Auction			By City
Demolition		28,000	
Scope Walk			Architecture and MEP Engineering
Develop Written Statement			
Develop Request for Qualifications			By City
Scope/Prebid Walk-through			Perspective Contractors
Construction Administration			3 site visits
Abatement			By City (if required)
Exterior Façade repair		12,000	
<b>OPTIONAL SERVICES</b>			
ECO Charette		31,000	alternative mechanical systems and solar
Site Survey (entry/plaza and building perimeter)		4,500	
Site Survey (add for full site)		2,500	
Geotechnical Investigation		20,000	allowance
Civil Design Services		42,500	allowance
Landscape Design Services		10,340	allowance
Regional Dispatch Center Addition		40,000	\$500,000 budget
Detailed Cost Estimate (Design Development Phase)		16,500	
Record Documents		24,800	4% allowance
Furniture & Equipment Procurement (BID PACKAGE)		75,000	
Building Commissioning		38,500	
	<b>\$</b>	<b>345,640</b>	
<b>Reimbursable Expense Allowance</b>			
	<b>6%</b>	<b>37,200</b>	<b>Allowance % of Basic Services</b>
<b>TOTAL FEE + ALLOWANCES/EXPENSES</b>			
		<b>1,048,540</b>	

**PROJECT BUDGET ASSUMPTIONS**Construction Budget  
\$8,000,000Furniture & Equipment Budget  
\$750,000Project Budget  
\$10,000,000

## BUILDING INFORMATION MODEL (BIM) ELECTRONIC FILE DESIGNATED USE LICENSE AGREEMENT

AGREEMENT between Hoefer Welker, LLC "Architect" and <<contractor name>> (hereinafter "Contractor") dated <<date>>.

WHEREAS, Architect and its Consultants have prepared for <<Owner name>> (hereinafter "Owner") drawings and other instruments of service for the <<Project name>> (hereinafter "Project");

WHEREAS, Contractor has requested that Architect and its Consultants furnish it with Electronic Files which contain information and data concerning certain Building Information Models furnished by the Architect and its Consultants, current as of the date of this Agreement, as follows:

- Architectural BIM model
- Structural BIM model
- MEP BIM model

These Electronic Files, provided electronically or on CD/DVD, are for the Contractor's use for reference purposes only to understand design intent. Any other use of the information or data in these Electronic Files without the express written authorization of the Architect is prohibited and at Contractor's risk.

NOW, THEREFORE, to effect the provision of an Electronic File Designated Use License to Contractor, the parties agree as follows:

1. Construction documents drawings prepared by Architect and its Consultants' that may be relied upon by Contractor Subcontractors, Suppliers and any other person or entity that obtains the construction documents drawings from or through the Contractor, pursuant to the conditions of the contract between the Owner and the Contractor, are limited to those two-dimensional printed drawings that are signed and sealed by the Architect and its Consultants and are identified as Contract Documents in the Agreement between the Owner and the Contractor, subject to any approved changes thereto. The Contractor shall be solely responsible for verifying and coordinating the information in the Electronic Files with the information contained in the Contract Documents. Electronic Files, including text, graphics, schedules, quantity and areas information, and all other information and data stored in Electronic Files are not Contract Documents and are furnished by Architect and its Consultants hereunder solely for the convenience of Contractor and for the limited purpose stated herein. Any information or data obtained or derived from such Electronic Files will be used at Contractor's sole risk, and the Architect and its Consultants make no representations that the information or data obtained or derived from such Electronic Files is correct, complete or accurate. Compatibility of the Electronic Files with Contractor's computer hardware or software is not guaranteed and any compatibility problems are the sole responsibility of the Contractor.
2. The Electronic Files provided under this Agreement are for the sole use of the Contractor on the Project identified above for the limited purpose stated herein, and this Agreement grants no right to furnish the Electronic Files information and data to any other person or entity or to use the information or data on any other project. The Contractor shall not transfer, convey, rent, sublicense, or otherwise distribute these Electronic Files or any portion of the information or data, or any right therein to any person or entity.
3. Duplicating, copying or distributing these Electronic Files or any portion of the information or data to any Other Entities for use solely on the Project is strictly prohibited unless the Contractor complies with the following requirements:
  - a. The Contractor shall maintain a detailed written log of all Entities that obtain the Electronic Files from or through the Contractor. This log shall clearly indicate the company name, address, telephone number and the name of the contact person for each such Entity. A copy of this log shall be provided to the Architect, with updates whenever a new entity obtains the Electronic Files.
  - b. The Contactor shall provide a copy of this Agreement to all entities that obtain the Electronic Files from or through the Contractor and shall obtain written confirmation, signed by a member of the Entity duly

authorized to legally obligate the Entity, that the Entity agrees to comply with all of the terms and conditions of this Agreement to the full extent as is required of the Contractor. The Contractor shall provide the Architect with a copy of such written confirmations prior to distributing these Electronic Files or any portion of the information or data to any Entities.

4. The Architect/Engineer's title block or other information identifying the Architect/Engineer or the Architect/Engineer's professional consultants will not be provided on the Electronic Files and this Agreement grants no right to reproduce or otherwise utilize such information.
5. Under no circumstances shall the furnishing of Electronic Files under this Agreement be deemed a sale of a product and Architect and its Consultants make no warranties, express or implied, in agreeing to furnish Electronic Files to Contractor.
6. Contractor understands that data stored on electronic media can be damaged in transmission, translation or be modified inadvertently and that errors and anomalies can be introduced into the data from the use of software application packages, operating systems, or computer hardware differing from those used by the Architect or its Consultants. Contractor acknowledges and assumes all such risks.
7. Contractor also recognizes that changes or modifications to the Architect's and its Consultants' drawings, Electronic Files or other instruments of service, including but not limited to files of text, data, graphics, schedules, quantity and areas information or other information and data stored on Electronic Files, which are introduced by anyone other than the Architect and its Consultants, may result in adverse consequences which cannot be predicted or controlled.
8. Therefore, and in consideration of the Architect and its Consultants agreement to furnish the above described information or data on Electronic Files, Contractor agrees, to the fullest extent permitted by law, to indemnify and hold Architect, Architect's Consultants and Owner harmless from and against any and all claims, liabilities, losses, damages, consequential damages, or costs, including but not limited to reasonable attorney's fees, arising out of or in any way connected with the use for any purpose, conversion, modification, misinterpretation, misuse or reuse, by Contractor or any person or entity that obtains the Electronic Files information or data from or through the Contractor, of information and data furnished by Architect and its Consultants under this Agreement.
9. The Contractor hereby agrees that to the fullest extent permitted by law, the Architect and the Architect's Consultants shall have no liability to the Contractor for any and all injuries, claims, losses, expenses, damages, or claim expenses arising out of this agreement from any cause or causes related to the Contractor's use of this Electronic Files information and data.
10. Provision of this Electronic Files information and data shall not obligate the Architect and its Consultants to provide historic or record files, updates, software, fonts, line types, documentation, reformatting or training of any kind relative to the use or application of the Electronic Files information and data herein.
11. If the Electronic Files are used by the Contractor as a posted set (in-progress as-built documents), then the Contractor shall be solely responsible for coordinating and updating the information and data obtained from Electronic Files as required due to approved changes to the Contract Documents.
12. The number of times during the course of the Project that Electronic Files are provided and the schedule for providing such files shall be subject to the approval of the Architect and its Consultants. The terms of this Agreement shall be in full force and effect for all Electronic Files that are provided.
13. The life span for the Contractor's use of Electronic Files information and data shall be limited to the date of Final Completion of the Project.

14. This Agreement contains the entire agreement between the parties as to the matters contained herein and all provisions of this Agreement shall be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, the Architect and Contractor have caused this Agreement to be executed by their duly authorized representatives, with approval by the Owner as of the date set forth above.

CONTRACTOR:

Company Name: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

ARCHITECT:

Company Name: Hoefer Welker, LLC

By (Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**HOEFER WELKER****Electronic Document Release Form Agreement**

Agreement for Use of Electronic Files Prepared by  
Hoefer Welker, LLC

Drawing Issue/ Date:

Sent to: (Firm/ Name)

By opening the enclosed ELECTRONIC Files, you agree to the following terms and conditions:

1. **For the purposes of this Agreement only, the use of "Hoefer Welker, LLC" also includes Hoefer Welker's Consultants. Requests for electronic files from Hoefer Welker's Consultants may also require completion of their release agreement and their associated fees.**
2. **References to "User" means the individual, entity or group using the enclosed electronic files.**
3. **Uses/File Types.** The electronic files will be used by the User for the purpose(s) indicated below. Any other use, including, but not limited to, modifications to the electronic files for the purpose of creating bid documents or plans for construction, is expressly forbidden.
  - ☐ Preparing Submittals (for Subcontractors only). The User agrees to attach a signed copy of this Agreement to any submittals produced for the referenced project.
  - ☐ Furniture Space Planning      ☐ FF&E Package      ☐ Overhead Coordination Drawings
  - ☐ Signage Package      ☐ Estimating      ☐ Facilities Management/ Maintenance
  - ☐ Other \_\_\_\_\_

File Type Requested:      ☐ AutoCAD Files, Version \_\_\_\_ or      ☐ PDF Format

Sheets Requested:      ☐ List Attached      or      ☐ Listed Here: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. **Instruments of Service.** The User acknowledges that the electronic files prepared for this Project by Hoefer Welker are Hoefer Welker's instruments of professional service. All files, whether tangible or electronically stored, authored or created by Hoefer Welker are Hoefer Welker's exclusive property and are not works for hire. Hoefer Welker grants the User permission to utilize the electronic files solely with respect to the specifically selected use in Item 3 above. The User agrees it will not use any portion of the electronic files in any manner outside of the scope of this use without the express prior written consent of Hoefer Welker. The User shall not own or claim a copyright of these electronic files prepared by Hoefer Welker.
5. **Assigns.** The User shall not give, assign or sell the electronic copies, or any subsequently made electronic copies, or any portion of the electronic files prepared by Hoefer Welker to any other individual, entity or group.
6. **Contract Documents.** The electronic copies provided herein shall in no way be considered equal to or a part of the sealed Contract Documents for this Project.
7. **Field Conditions.** Hoefer Welker does not state, claim or imply in any way that these computer-generated drawings are an accurate reflection of actual constructed conditions, or coordinated with any other discipline or trade. Drawings shall only be considered diagrammatic, and a reflection of the design intent. Due to the possible corruption of electronic data, errors or anomalies may be introduced into the drawings. The User shall be solely responsible for the verification of the suitability of the electronic information provided for their own use and shall use the electronic data provided at the User's own risk.
8. **Electronic File Conversion.** (Files can be converted from Revit to AutoCAD or pdf; and AutoCAD to pdf. Conversions from AutoCAD to Revit is not available.) Hoefer Welker makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In using it, modifying it, or accessing information from it, the User becomes responsible for confirmation of accuracy and checking

of the data from the media. Hoefer Welker hereby disclaims any and all responsibility from any results obtained in use of this electronic media and does not guarantee accuracy of the information. The User understands that automated conversion of information and data to an alternate system cannot be accomplished without the possibility of introduction of inexactitudes, anomalies and errors. The User agrees to accept all risk associated with this conversion, and to the fullest extent permitted by law, to hold harmless and indemnify Hoefer Welker from and against all claims, liabilities, losses, damages, and costs, including but not limited to attorney's fees, arising there from or in connection therewith.

9. **Electronic File Use.** The User agrees, to the fullest extent permitted by law, to indemnify, defend and hold Hoefer Welker, LLC harmless from and against all claims, liabilities, losses, damages and costs (including attorneys' fees and defense costs) arising or allegedly arising out of any modification, misinterpretation, misuse or reuse by the User or others of the electronic data provided by Hoefer Welker, LLC under this Agreement.
10. **Dispute Resolution.** Any disagreements or legal action arising out of the enforcement of this Agreement shall be initially addressed by mediation. Mediation or other legal remedies shall be subject to the Laws of the State of Kansas and shall be conducted in the Kansas City area.
11. **Breach of Agreement.** Hoefer Welker will vigorously defend its rights, property, and copyright if it is discovered that the User has breached any term of this Agreement. This could include, but is not limited to, seeking a financial judgment against the User.

IF YOU ARE NOT IN AGREEMENT WITH THESE TERMS AND CONDITIONS, YOU WILL NOT RECEIVE THE REQUESTED ELECTRONIC FILES FROM HOEFER WELKER.

*Architect:* Hoefer Welker, LLC

*User:* \_\_\_\_\_

*By:* \_\_\_\_\_  
(Signature)

*By:* \_\_\_\_\_  
(Signature)

*Name:* \_\_\_\_\_

*Name:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Title:* \_\_\_\_\_

*Date:* \_\_\_\_\_

*Date:* \_\_\_\_\_