

A RESOLUTION OF THE CITY OF WEST PLAINS, MISSOURI AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH SAPP DESIGN ASSOCIATES ARCHITECTS FOR SERVICES TO DEVELOP A 20-YEAR MASTERPLAN FOR THE WEST PLAINS CIVIC CENTER.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI AS FOLLOWS:

Section 1: The City Administrator is authorized and directed to execute a contract with Sapp Design Associates Architects for services to develop a 20-year masterplan for the West Plains Civic Center

Section 2: This Resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS 21ST DAY OF JUNE 2022.

CITY OF WEST PLAINS, MISSOURI

BY: 
MAYOR MICHAEL
TOPLIFF

ATTEST:


CITY CLERK ALLISON SKINNER



June 12, 2022

To: City Council

From: Eryn Walters, Civic Center Director

Re: Sapp Design Architects

Executive Summary

The City of West Plains' Civic Center is seeking approval on a contract with Sapp Design Associates Architects for services to develop a 20-year masterplan for the West Plains Civic Center.

Discussion

The City of West Plains is looking to enter into a contract agreement with Sapp to develop a 20-year masterplan for the West Plains Civic Center. This process will be completed in three phases: Existing Building Evaluation, Master Plans Services, and finally future projects and services.

During the process, there will be three groups tapped for input on the process. There will be a core group that meets regularly, a stakeholder group that will be worked with a couple times during the process to assist in working through ideas, then a couple community forums to get a real feel from the community during the process.

When we finish this project, we will be walking about with a roadmap for us to work towards serving our current citizens better but to also work towards meeting the needs of our citizens twenty years from now.

Fiscal Impact

This project has been broken down by phases: Existing Building evaluation at \$13,000; Master Plan Services at \$39,500; and Meetings at \$17,400 (this phase will involve core, stakeholder, and a city council presentation).

This project will be funded from the Civic Center Capital Projects for FY22B.

Timeline

Once approved, the Core group will begin meeting with SAPP and the process is expected to take six months and should then be completed by the end of this budget year.

AIA[®] Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 21st day of June in the year Two Thousand Twenty-Two (2022).

(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 West Plains, Missouri
1910 North Holiday Lane
West Plains, Missouri 65775

and the Architect:

(Name, legal status, address and other information)

Sapp Design Associates Architects
3750 South Fremont
Springfield, Missouri 65804

for the following Project:

(Name, location and detailed description)

The project is for the existing West Plains Civic Center which primary functional spaces include a 2,875 – seat arena and adjacent connected exhibit hall, a 450 seat theater, a 25 yard, 6 lane pool and a fitness center. Seven (7) meeting rooms of various sizes are located throughout the two-level building, along with various administrative and support spaces. A local community college leases with the City in operating the facility.

Constructed in 1993, the building is well-maintained and in good condition, but suffers from functional challenges and could potentially better address the needs of the community and surrounding region with appropriate architectural modifications. The purpose of these services is to help the Owner identify, prioritize and establish cost parameters for a variety of potential improvements.

PHASE I: EXISTING BUILDING EVALUATION:

Services will include an evaluation of the existing West Plains Civic Center to assess the capacity and suitability of the building to provide current and future planned services. Additionally, the building will be evaluated to determine suitability for potential renovations.

PHASE II: MASTER PLAN SERVICES:

Services include developing a Building Master Plan which will identify current and future Event Center programs and related facility improvements with a twenty (20) year outlook.

PHASE III: FUTURE PROJECTS AND SERVICES:

As may be authorized by the owner, services will include full Basic Services for Schematic Design through Construction Administration and Post Construction Services for any identified and approved building modifications.

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.

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ARTICLE 1 INITIAL INFORMATION

§ 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.")

The intent of this Agreement is to utilize the Architect for consulting, building evaluation and Master Planning services to help determine the direction of future facility upgrades. This contract will include the scope of services identified in Phase I and Phase II below and may be amended accordingly for any future Phase III desired scope.

PHASE I: EXISTING BUILDING EVALUATION:

Services will include an evaluation of the existing West Plains Civic Center to assess the capacity and suitability of the building to provide current and future planned services. Additionally, the building will be evaluated to determine suitability for potential renovations for continued use. Specific services include:

1. Conduct a facility analysis to identify functional issues, readily observable code and ADA deficiencies, and to identify areas where the current building configuration fails to address the needs of the community and the region;
2. Physical building analysis including, shell, roof, HVAC, electrical and plumbing systems;
3. Any structural evaluation of the building will be by Owner's Consultant.;
4. Written report and presentation.

PHASE II: MASTER PLAN SERVICES:

Services include developing a Building Master Plan which will identify current and future Event Center programs and explore renovations necessary to address the needs of the community and the region with a twenty (20) year outlook. Specific Services include:

1. Meet with City leaders and staff and other stakeholder groups to establish goals for the project and a vision for the next twenty (20) years of the Civic Center's useful life with five-year milestones
2. Develop graphic depictions of renovation and/or expansion options that will enable stakeholders to understand the modifications proposed, their extent and intended function
3. Develop an order-of-magnitude budget for each proposed improvement as a discrete subproject, creating a menu of improvement options from which the City may choose.
4. Prepare a report summarizing the planning and design process conducted, the results of the study, the estimated cost of improvements and suggested next steps;
5. Written report and final presentation and delivery to Council after approval of Master Plan by Core Team Committee.

PHASE III: FUTURE PROJECTS AND SERVICES:

The Owner may decide to proceed with any identified projects at the conclusion of the Phase I & II Services. At such time as identified projects are determined the Architect will issue an amendment which stipulates the scope, schedule, budget and associated fees as mutually agreed. The Architect will not proceed with any Phase III Services until the Owner issues authorization to the Architect to provide services.

§ 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.)

The Owner's program will be reviewed and refined, if required, through the Phase II scope of services.

§ 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.)

The existing facility is the West Plains Civic Center at 110 St. Louis Street, West Plains, Missouri.

§ 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.)

Potential renovation cost will be determined as part of Phase II Services.

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

- .1 Design phase milestone dates, if any:
To be determined when a project has been identified.
- .2 Construction commencement date:
To be determined when a project has been identified prior to bidding.
- .3 Substantial Completion date or dates:
To be determined when a project has been identified prior to bidding.
- .4 Other milestone dates:
Not applicable

§ 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.)

To be determined when a project has been identified.

§ 1.1.6 Paragraph deleted

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§ 1.1.6.1 Paragraph deleted

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Eryn Walters, Director
West Plains Civic Center
110 St. Louis St.
West Plains, Missouri 65775

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Not applicable

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

- .1 Geotechnical Engineer:
If needed, to be determined when a project has been identified.
- .2 Civil Engineer:
If needed, to be determined when a project has been identified.
- .3 Other, if any:
(List any other consultants and contractors retained by the Owner.)
Unknown at time of execution.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Pamela Haldiman, Senior Project Manager
Kristi Beattie, Project Manager

§ 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.)

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Structural Engineer:
To be determined.
- .2 Mechanical Engineer:
To be determined.
- .3 Electrical Engineer:
To be determined.

§ 1.1.11.2 Consultants retained under Supplemental Services:

To be determined.

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

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Not Applicable

§ 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. If required, the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 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.

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

§ 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.

§ 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.

§ 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 (\$1,000,00.00) combined single limit 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 claim, 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 annually.

§ 2.5.7 *Paragraph deleted*

§ 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 (PHASE III)

§ 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.

§ 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 *Paragraph deleted*

§ 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, relative to the construction permit.

§ 3.2 Schematic Design Phase Services

§ 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 will 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.

§ 3.2.5.1 *Paragraph deleted*

§ 3.2.5.2 *Paragraph deleted*

§ 3.2.6 The Architect shall submit to the Owner an opinion of probable 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 request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 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, 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.

§ 3.3.2 The Architect shall update the 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, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 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/or 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 shall 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 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.

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§ 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 drafting contracts for construction to be reviewed by the Owner's legal counsel.

§ 3.5.2 Competitive Bidding

§ 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 to prospective bidders;
- .2 organizing and conducting 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 organizing and conducting 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, the Architect shall consider requests for substitutions and prepare and distribute addenda identifying approved substitutions, if the request is timely, to all prospective bidders.

§ 3.5.3 Paragraph deleted

§ 3.5.3.1 Paragraph deleted

§ 3.5.3.2 Paragraph deleted

§ 3.5.3.3 Paragraph deleted

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 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 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.

§ 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.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site or as otherwise 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, continuous, on-site observations 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 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.

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§ 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

§ 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.

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

§ 3.6.4 Submittals

§ 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

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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 reasonable 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

§ 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 during the course of the project.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct site observations 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,
- .4 issue a final Certificate for Payment based upon a final observation 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 site observations shall be conducted with the Owner 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.

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§ 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 (PHASE I, II AND III AS APPLICABLE)

§ 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/ Phase II
§ 4.1.1.2 Multiple preliminary designs	Architect/ Phase III
§ 4.1.1.3 Diagrammatic Plans	Architect/ Phase I
§ 4.1.1.4 Existing facilities surveys	Architect/ Phase I
§ 4.1.1.5 Site evaluation and planning	Architect/ Phase II
§ 4.1.1.6 Building Information Model management responsibilities	Not Provided
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Not Provided
§ 4.1.1.9 Landscape design	Not Provided
§ 4.1.1.10 Architectural interior design	Architect/ Phase III
§ 4.1.1.11 Value analysis	Not Provided
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not Provided
§ 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	Not Provided
§ 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/ Phase I & III
§ 4.1.1.21 Telecommunications/data design	Owner / Phase III
§ 4.1.1.22 Security evaluation and planning	Owner / Architect / Phase III
§ 4.1.1.23 Commissioning	Not Provided
§ 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

Init.

§ 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	Owner/ Architect/ Phase III
§ 4.1.1.29 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.30 Other Supplemental Services	Not Provided

§ 4.1.2 Description of Supplemental Services

§ 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.)

- 4.1.1.1 **Programming:** The Architect will assist the Owner in reviewing and refining (if necessary) a written program based on Owner provided information and evaluate options to reconfigure the existing facility as per Scope of Work contained herein.
- 4.1.1.2 **Multiple Preliminary Designs:** The Architect will provide various alternative diagrammatic solutions as part of the Concept Design process. As part of the Schematic Design process on future identified projects, the Architect will provide up to a maximum of (2) two alternative concept designs for each project if necessary, for the Owner's review, in order to select a specific approach to be further developed in the Schematic Design Phase and executed in the Architect's Basic Services.
- 4.1.1.3 **Diagrammatic Plans:** The Architect will develop diagrammatic plans of the existing building as needed for the Phase II Scope through the Owner's provided As-built Documents.
- 4.1.1.4 **Existing Facilities Surveys:** Architect will perform a visual facilities survey to assist in a property conditions assessment as per Scope of Work contained herein.
- 4.1.1.5 **Site Evaluation and Planning:** The Architect will provide a general evaluation of the existing site and assist in a property conditions assessment for suitability to accommodate current and proposed future upgrades as per Scope of Work contained herein.
- 4.1.1.10 **Architectural Interior Design:** The Architect will only provide basic Interior Design Services for any identified Projects in Phase III but will be limited to material and finish selections. Interior Design Services do not include specifying furnishings, fixtures, equipment, decorative window coverings, artwork or any finishes other than basic finish materials.
- 4.1.1.20 **Coordination with Owner's Consultants:** The Architect will coordinate its work with that of each of the Owner's Vendor's/Specialist's/Consultant's work, if any, that may be required to be part of the Architect's base bid documents.
- 4.1.1.22 **Security Evaluation and Planning:** The Architect will coordinate its work product with each of the Owner's Vendor's/Specialist's documentation that may be required to be part of the Architect's base bid documents.
- 4.1.1.28 **Furniture, Furnishings and Equipment Design:** The Architect will coordinate with the Owner to layout, select, specify, and assist with procurement of furnishings, fixtures, equipment, decorative window coverings and artwork in addition to basic finishes.

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

Init.

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

- 4.1.1.21 Telecommunications / Data Design:** The Owner will provide the Architect with all information necessary to facilitate in the bid documents, adequate pathways, rough-ins, special requirements or other special needs to facilitate Owner's design and installation of all Telecommunication and data design for any identified projects.
- 4.1.1.22 Security Evaluation and Planning:** The Owner will coordinate with the Architect, the Owner's preferred or contracted Vendors/Specialists specifications, drawings, required pathways, rough-ins, electrical and mounting requirements, and any other information or documentation that may be required to be part of the Architect's base bid documents.
- 4.1.1.28 Furniture, Furnishings and Equipment Design:** The Owner will coordinate with the Architect to layout, select, specify, and assist with procurement of furnishings, fixtures, equipment, decorative window coverings and artwork in addition to basic finishes.

§ 4.1.3 Paragraph deleted

§ 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.

§ 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 in writing:

- .1 Up to two (2) reviews, maximum, of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Up to two (2) per month maximum visits to the site by the Architect during construction
- .3 Up to two (2) observations, maximum, for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Up to two (2) observations, maximum, for any portion of the Work to determine final completion.

§ 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 sixty (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 sixty (60) 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 (PHASE I, II AND III AS APPLICABLE)

§ 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.

§ 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.

§ 5.4 The Owner will be required to furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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§ 5.5 The Owner will be required to furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations for building foundation design and other site development.

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

§ 5.7 Paragraph 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.

§ 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 a reasonable time 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 (PHASE III)

§ 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 or coordinated by the Architect and shall include contractors' general conditions costs, overhead and profit. 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, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work shall be provided to the Architect 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;
- .3 terminate in accordance with Section 9.5;
- .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 (ALL PHASES AS APPLICABLE)

§ 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

§ 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

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to non-binding 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 non-binding mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. 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.

§ 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 Howell County, Missouri.
- 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 Paragraph deleted

§ 8.3.1 Paragraph deleted

§ 8.3.1.1 Paragraph deleted

§ 8.3.2 Paragraph deleted

§ 8.3.3 Paragraph deleted

§ 8.3.4 Consolidation or Joinder

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

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

§ 8.3.4.3 Paragraph deleted

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

ARTICLE 9 TERMINATION OR SUSPENSION (ALL PHASES AS APPLICABLE)

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, through no fault of the Architect or its consultants, 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 ninety (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.

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§ 9.4 Either party may terminate this Agreement upon not less than seven (7) 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 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or 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 and any required licensing fee.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, 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:

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

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one (1) 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 (ALL PHASES AS APPLICABLE)

§ 10.1 This Agreement shall be governed by the laws of the State of Missouri.

§ 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.

§ 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 fourteen (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 fourteen (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 or that is non-insurable.

§ 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.

§ 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 Paragraph deleted

§ 10.8.1 Paragraph deleted

§ 10.9 Paragraph deleted

ARTICLE 11 COMPENSATION

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

PHASE I: EXISTING BUILDING EVALUATION:

The compensation for Phase I Services will be based on the Architect's and Consultant's hourly time with an estimated not-to-exceed fee of Thirteen Thousand Dollars and Zero Cents (\$13,000.00).

PHASE II: MASTER PLAN SERVICES:

The compensation for Phase II Services will be based on the Architect's and Consultant's hourly time with an estimated not-to-exceed fee of Thirty-Nine Thousand Five Hundred Dollars and Zero Cents (\$39,500.00).

MEETINGS:

The compensation for the outlined meetings for Phase I and Phase II will be based on the Architect's hourly time with an estimated not-to-exceed fee of Seventeen Thousand Four Hundred Dollars and Zero Cents (\$17,400.00).

Meetings included are:

Focus Groups – two (2) meetings

Core Team – six (6) meetings (two (2) as virtual)

Community Forums – two (2) meetings/presentations

City Council – two (2) meetings/presentations

PHASE III: FUTURE PROJECTS AND SERVICES:

The compensation for Basic Services on any future approved Projects will be on a percentage of construction cost or as mutually agreed upon per contract amendment for Basic Architectural Services for all items designed, coordinated, and/or specified by the Architect and is inclusive of the Contractor's Base Bid, all Bid Alternates, Profit, Overhead, Bonds, and Insurance Cost. Owner and Architect will negotiate a mutually agreeable fee for each identified project.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1, 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.)

4.1.1.1 Programming: This Service will be provided as a Basic Service through the Phase II compensation value in 11.1.

4.1.1.2 Multiple Preliminary Designs: This Service will be provided as a Basic Service through the Phase III compensation value in 11.1.

4.1.1.3 Diagrammatic Plans: This Service will be provided as a Basic Service through the Phase I compensation value in 11.1.

4.1.1.4 Existing Facilities Surveys: This Service will be provided as a Basic Service through the Phase I compensation value in 11.1.

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- 4.1.1.5 **Site Evaluation and Planning:** This Service will be provided as a Basic Service through the Phase II compensation value in 11.1.
- 4.1.1.10 **Architectural Interior Design:** This Service will be provided as a Basic Service through the Phase III compensation value in 11.1.
- 4.1.1.20 **Coordination with Owner's Consultants:** This Service will be provided as a Basic Service through the Phase I & III compensation value in 11.1.
- 4.1.1.22 **Security Evaluation and Planning:** This Service will be provided as a Basic Service through the Phase III compensation value in 11.1.
- 4.1.1.28 **Furniture, Furnishings and Equipment Design:** This Service will be provided as a Basic Service through the Phase III compensation value in 11.1.

§ 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.)

Billing of services will be based on utilizing the Architect's current basic hourly rates in place at the time services were performed, see Article 11.7 for hourly rates.

Option – A lump sum, percentage fee, or other fee formats may be utilized for any single specific additional service where hourly basis is not preferred by either party.

§ 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 twenty percent (20%).
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

In addition, the Architect's hourly time as reasonably necessary to accomplish the associated services and tasks.

§ 11.5 When compensation for Phase III 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-Five	Percent	(35%)
Procurement Phase	Five	Percent	(5%)
Construction Phase	Fifteen	Percent	(15%)

Total Basic Compensation One Hundred Percent (100%)

§ 11.6 *Paragraph deleted*

§ 11.6.1 When compensation is on a percentage basis of the cost of the work 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 those portions in accordance with the schedule set forth in Section 11.5 based on (1) the accepted bona fide low bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the cost of the work for such portions of the project. 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' normal annual fiscal year review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Init.

Rates shown reflect current fiscal year (2022) values for the Architect. Any future or subsequent projects or additional services would be based on the current rates at that time.

Employee or Category	Rate (\$0.00)
Project Administrator	\$275.00 per hour
Senior Project Manager	\$230.00 per hour
Director of Interior Design	\$210.00 per hour
Junior Project Manager	\$200.00 per hour
Project Architect	\$185.00 per hour
Architect/Designer III	\$170.00 per hour
Architect/Designer II	\$160.00 per hour
Architect/Designer I	\$130.00 per hour
Senior CADD Technician	\$170.00 per hour
CADD Technician	\$120.00 per hour
Marketing/ Communications Dir.	\$120.00 per hour
Business Manager	\$105.00 per hour
Administrative Assistant	\$ 80.00 per hour
Clerical Support	\$ 65.00 per hour
Architectural Student	\$ 65.00 per hour
Interior Design Student	\$ 65.00 per hour

§ 11.8 Compensation for Reimbursable Expenses

§ 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 *Paragraph deleted;*
- .2 Permitting and other fees required by authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, and standard form documents;
- .4 Postage, handling, and delivery;
- .6 *Paragraph deleted;*
- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .6 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;
- .7 All taxes levied on professional services and on reimbursable expenses;
- .10 *Paragraph deleted;*
- .11 *Paragraph deleted;* and,
- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus twenty percent (20%) of the expenses incurred.

§ 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.)

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

Init.

§ 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 for Phase I Services.

§ 11.10.1.2 *(Paragraph deleted)*

§ 11.10.2 Progress Payments

§ 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 thirty (30) 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.)

Legal Prevailing Rate

§ 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 Any delays in the continuous sequence of Basic and Additional Services of each authorized project, not the fault of the Architect, exceeding sixty (60) consecutive calendar days (during the performance of the listed Phases or after the completion of a Phase) shall adjust the basic compensation Article 11.1 on the basis of the percentage of construction cost, as follows:

PHASE III SCOPE:

Schematic Design	(0.25%)
Design Development	(0.25%)
Construction Documents	(determined at that time, but no less than 0.5%)
Bidding	(0.25%)
Construction Administration	(determined at that time)

§ 12.2 The following services are specifically excluded from the basic compensation of this contract. Reference Article 4 for other services that are additional and/or optional services:

- a. Any public or private on-site or off-site utility infrastructure and roadway coordination and design.
- b. Environmental assessments and impact studies
- c. Geotechnical Engineering Services
- d. Special inspection testing and certifications
- e. Building and Regulatory Permit Fees
- f. Irrigation Design
- g. Construction Staking
- h. Providing Structural Building Calculations
- i. Interior Design for Furniture and Equipment Specifications
- j. Land Surveying
- k. Acoustical Engineering, Sound System, Special Lighting and Video System Design
- l. Security Systems, Phone Systems, Data, Technology System or Infrastructure.

§ 12.3 If, due to the Architect's error, any required item or component of the projects is omitted from the Architect's construction documents, the Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or

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betterment to the project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project. However, if due to the Architect's error and/or omission from the construction documents occur then the Architect under the basic fee value will provide the necessary services and documents required for the Contractor to incorporate that element.

§ 12.4 In the event of any litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of a dispute by arbitration, the term "prevailing party" shall be determined by that process.

§ 12.5 Notwithstanding any other provisions of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the owner or the Architect, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

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

ARTICLE 13 SCOPE OF THE AGREEMENT

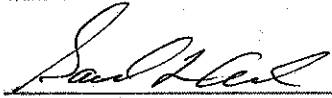
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 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. AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed and dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)
Not applicable

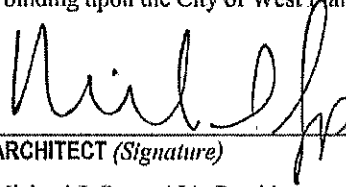
This Agreement entered into as of the day and year first written above.

The individual signing below hereby represents and warrants that, with the express approval of the West Plains City Council, s/he is duly authorized on behalf of the City of West Plains, Missouri to execute and deliver this Agreement on behalf of the City of West Plains and that this Agreement is binding upon the City of West Plains in accordance with its terms.



OWNER (Signature)

SAMUEL L. ANSELM, City Administrator
(Printed name and title)



ARCHITECT (Signature)

Michael J. Sapp, AIA, President
(Printed name, title, and license number, if required)

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