

 **AIA**® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Seventh day of August in the year Two Thousand and Seventeen

BETWEEN the Architect's client identified as the Owner:

Joint Economic Development Organization (JEDO)
c/o City of Topeka
City Clerk
215 SE 7th
Topeka, Kansas 66603

and the Architect:

Horst, Terrill & Karst Architects, P.A.
900 S. Kansas Ave., Suite 200
Topeka, KS 66612
Telephone Number: 785-266-5373
Fax Number: 785-266-5270

for the following Project:
East Topeka Learning Center
2014 SE Washington St.
Topeka, Kansas 66607
HTK Project No 1704.03

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.

Init.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1.

1.1.1 a) Design, Engineering and Construction administration services for the Building renovation for the East Topeka Learning Center. First floor complete renovation. Second floor renovated to 'warm shell'. b) RFQ issued by Go Topeka for the East Topeka Learning Center Building Remodel due April 7, 2017 at 2pm.

1.1.2 Project Consultants, included in basic services

- a) Civil engineering: Bartlett & West Inc., Topeka Kansas
- b) MEP engineering: Latimer Sommers & Associates, Topeka Kansas
- c) Structural engineering Certus, Topeka Kansas

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:
Fourth Quarter 2017

.2 Substantial Completion date:
Substantial completion TBD – but ready for full occupancy and use before January 1, 2019.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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§ 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 for the duration of this Agreement.

- .1 Professional Liability insurance, including contractual liability, covering claims arising out of the performance of the Services under this Agreement and for claims arising out of negligent acts, errors, and omissions for which Architect may be liable, with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) aggregate.
- .2 Commercial General Liability insurance which includes premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground explosion and collapse hazard, and person/advertising injury coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence. If such insurance policy contains a general aggregate limit, it shall separately apply to this Project.
- .3 Commercial Comprehensive Automobile Liability insurance which includes contractual liability coverage and coverage for all owned, hired or non-owned vehicles utilized by Architect with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) per accident for bodily injury and property damage.
- .4 Architect shall maintain at all times during the term of this Agreement insurance coverage for:
 - (i) claims under workers' or workman's compensation, disability benefit and other similar employee benefit laws;
 - (ii) claims for damages because of bodily injury, occupational sickness or disease or death of Architect's employees under any applicable employer's liability law; and
- .5 Architect shall also provide and maintain any type of insurance not described above which it requires for its own protection or on account of statutes.

§ 2.5.2 Unless otherwise required, each insurance policy required in this Agreement, except the Architect's professional liability policy:

- .1 shall be kept in force throughout performance of the Services and for one (1) year after the Project Completion Date; and
- .2 shall be an occurrence policy.

§ 2.5.3 The Architect's professional liability policy required by this Agreement:

- .1 shall be issued by an insurance carrier acceptable to the Owner;
- .2 shall be kept in force throughout performance of the Services and for two (2) years after the Project Completion Date;
- .3 may be a claims-made policy; and
- .4 if any professional liability is canceled or not renewed, any substitute policy shall have a commencement date retroactive to the date upon which the Architect commences performance of the Services under this Agreement.

§ 2.5.4 Prior to performance of the Services, the Architect shall contractually require that its consultants have the required insurance coverage and that of its Consultants are in effect pursuant to this Agreement. The Architect agrees that the Owner shall have no responsibility to verify compliance by the Architect or its Consultants with any insurance requirements.

§ 2.5.5 Architect's Commercial General Liability policy and Commercial Comprehensive Automobile Liability policy, as set forth above, shall be endorsed to include the Indemnified Parties as additional insureds.

§ 2.5.6 With the exception of Workers Compensation and Professional Liability insurance, all insurance required by this Agreement shall be endorsed to be primary and not contributing with any other liability insurance available to the Owner and the Indemnified Parties.

§ 2.5.7 All insurance required hereunder shall not be subject to a deductible amount on a per-claim basis of more than Twenty-Five Thousand Dollars (\$25,000.00).

§ 2.5.8 All insurance coverage procured by Architect, with the exception of workers compensation insurance coverage, shall be provided by insurance companies having policyholder ratings not lower than "A-" and financial ratings not lower than "VIII" in the Best's Insurance Guide, latest edition in effect as of the date of this Agreement and subsequently in effect at the time of renewal of any policies required hereunder.

§ 2.5.9 Architect shall provide certificate(s) of insurance to the Owner as part of a properly completed application for payment before Architect shall be entitled to any sum of money payable under this Agreement. All certificates shall be executed by a duly authorized agent of each of the applicable insurance carriers and state that at least thirty (30) days' notice shall be given to the Owner before any policy covered thereby is canceled. Such certificate shall be in a form acceptable to the Owner. At the request of Owner, Architect shall provide additional certificate(s) evidencing continuation of coverage with respect to insurance coverage that are to remain in force after completion of the Project as set forth in this Agreement.

§ 2.5.10 The maintenance in full current force and effect of such terms and amounts of insurance shall be a condition precedent to Architect's exercise or enforcement of any rights under this Agreement.

§ 2.5.11 If a part of the Services hereunder is performed by a Consultant, Architect shall require its Consultants to secure and maintain insurance against all applicable hazards or risks of loss set forth in this Agreement.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Additionally, the project Architect's basic services will include:

Building Program development

Civil, design and engineering services with limited landscaping per City of Topeka standards

Information Technology, network electronics, access control and security system design.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, 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 the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall review information provided by the Owner and the Owner's consultants and 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 Time is of the essence for performance of all work under this Agreement. The Architect shall execute services with reasonable promptness based on specific facts and circumstances. 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. If Architect wishes to make a request for additional time to complete any portion of this Agreement, the Architect will make such a request in writing outlining the reason for the additional time and providing new time parameters to the 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 made without the Architect's approval; which will not be unreasonably withheld or delayed.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 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.

§ 3.1.7 MEETINGS

§ 3.1.7.1 During each phase of the Project Architect shall schedule regular meetings with Owner or otherwise meet upon the reasonable request of Owner to discuss the progress, development and analysis of the Project.

§ 3.1.7.2 At the request of Owner, prior to meeting time Architect shall provide to Owner copies of the data, compilations, calculations, work papers and other information or work requested by Owner that is the subject of the meeting for the Owner's review in either electronic or print form as requested. Examples include but are not limited to scheduling data, energy modeling, pavement analysis, site layout documents, civil calculations and other data.

§ 3.1.7.3 At the request of Owner, Architect shall endeavor to ensure that the persons who actually performed the work and/or calculations which are the subject of the meeting shall be physically present at each such meeting.

§ 3.1.7.4 At the request of Owner, Architect and any applicable consultant shall lead public meetings that are called to discuss the project. At the request of Owner, Architect and its applicable consultants shall also attend public meetings in order to report, discuss and answer questions about the Project.

§ 3.1.7.5 Nothing contained within this Agreement shall relieve or otherwise lessen the standards or obligations of the Architect or any of its consultants, and no review by Owner shall be deemed verification of underlying data, compilations, calculations, work papers, conclusions, or other work of Architect and its consultants.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall assist the owner in development of the program and shall review other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall report to the Owner the results of this review, specifying the scope thereof. The Architect's performance and design, and those of its Consultants, shall conform to all applicable requirements in effect as of the date of the services imposed by governmental authorities having jurisdiction over the Project pursuant to the normal Standard of Care.

§ 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, and the proposed procurement or 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, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's 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 Upon 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 modeling. 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 environmentally responsible 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 other environmentally responsible design services under Article 4.

§ 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 an 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 request the Owner's approval. Approval of Owner shall be for the sole purpose of confirming whether such design documents are generally consistent with the Owner's intent for the Project and shall not waive, release or relieve the Architect of its professional responsibilities hereunder.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Upon the Owner's written approval of the Schematic Design Documents, and on the Owner's written 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 such other elements as may be appropriate to portray the Owner's disclosed aesthetic, functional, and operational objectives. 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 estimate of the Cost of the Work.

§ 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. Approval of Owner shall be for the sole purpose of confirming whether such design documents are generally consistent with the Owner's intent for the Project and shall not waive, release or relieve the Architect of its professional responsibilities hereunder.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Upon on the Owner's written approval of the Design Development Documents, and on the Owner's written 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 of materials and systems and other requirements for the construction of the Work, including consideration and integration of existing site features and structures. The Owner and Architect acknowledge that in order to construct 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 into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and 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.

§ 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. Approval of Owner shall be for the sole purpose of confirming whether such design documents are generally consistent with the Owner's intent for the Project and shall not waive, release or relieve the Architect of its professional responsibilities hereunder.

§ 3.5 BIDDING OR NEGOTIATION 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

§ 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 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 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 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

(Paragraphs 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™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor further modify AIA Document A201–2007, 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. Except to the extent Contract Documents unambiguously dictate such matters, 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.

§ 3.6.1.3 Subject to Section 4.3, 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.

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User Notes:

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§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 such 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, material and equipment 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 A201-2007, 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 and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to 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 material 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. The Architect's action in reviewing submittals shall be taken in accordance with the approved

§ 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. 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 In accordance with the Architect-approved submittal schedule, 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, unless otherwise specifically stated by the Architect, of any 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 Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, 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 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 authorize 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 the provisions of Section 4.3, 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

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections 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 the Work is found to be substantially complete, 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, prepare the one-year warranty review for presentation to the contractor, and conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional 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.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	Exhibit A
§ 4.1.2 Multiple preliminary designs	Architect (limited)	Exhibit A
§ 4.1.3 Measured drawings	Architect (limited)	Exhibit A
§ 4.1.4 Existing facilities surveys	Not Provided	Exhibit A
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	Exhibit A
§ 4.1.6 Building information modeling	Not Provided	Exhibit A
<i>(Row deleted)</i>		
§ 4.1.7 Civil engineering	Architect/Civil	Exhibit A
§ 4.1.8 Landscape design	Architect/Civil	Exhibit A
§ 4.1.9 Architectural Interior Design (B252™-2007)	Not Provided	Exhibit A
§ 4.1.10 Value Analysis (B204™-2007)	Not Provided	Exhibit A
§ 4.1.11 Detailed cost estimating	Not Provided	Exhibit A
§ 4.1.12 On-site project representation	Not Provided	Exhibit A
<i>(Row deleted)</i>		
§ 4.1.13 Conformed construction documents	Not Provided	Exhibit A
§ 4.1.14 As-Designed Record drawings	Not Provided	Exhibit A
§ 4.1.15 As-Constructed Record drawings	A/E	Exhibit A
§ 4.1.16 Post occupancy evaluation	Architect/Owner	Exhibit A
§ 4.1.17 Facility Support Services (B210™-2007)	Not Provided	Exhibit A
§ 4.1.18 Tenant-related services	Not Provided	Exhibit A
§ 4.1.19 Coordination of Owner's consultants	Not Provided	Exhibit A
§ 4.1.20 Telecommunications/data design	A/E	Exhibit A
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	Not Provided	Exhibit A
§ 4.1.22 Commissioning (B211™-2007)	A/E (limited)	Exhibit A
§ 4.1.23 Extensive environmentally responsible design	Not Provided	Exhibit A
§ 4.1.24 LEED® Certification (B214™-2007)	Not Provided	Exhibit A
§ 4.1.25 Fast-track design services	Not Provided	Exhibit A
§ 4.1.26 Historic Preservation (B205™-2007)	Not Provided	Exhibit A
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)	Not Provided	Exhibit A
§ 4.1.28 Site Survey	Not Provided	Exhibit A

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§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

Exhibit A- attached

§ 4.3 Additional Services may be provided 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 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 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 services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a material change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .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 data 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; beyond the project budget or scope.
- .7 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

(Paragraph deleted)

- .8 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .9 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 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 the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Extensive time 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 extensive 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;

- .5 Evaluating extensive substitutions proposed by the Owner or Contractor and making extensive subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 90 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 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 Average of two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 Average (2) visit per month to the site by the Architect over the duration of the Project during construction. A visit includes project meetings, progress meetings and inspections.
- .3 Two (2) inspections 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 Two (2) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Thirty (30) 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.

§ 4.4 Absent the written agreement between the parties, no actions shall serve to waive any requirements of this Agreement or otherwise serve as a basis for additional compensation or time for performance, even in the event of Owner benefitting therefrom.

§ 4.5 A change in the Fee, any Reimbursable Expenses or the Contract Time shall be accomplished only by written notice from the Owner expressly authorizing the Services and stating the amount of the change.

§ 4.6 Architect hereby acknowledges that the Owner's designated representative is the only person who can order changes in the Services, and that Architect shall not comply with requested changes from any person other than the Owner's designated representative. If Architect receives requests for changes from any person other than the Owner's designated representative, Architect shall report such request to the Owner's designated representative for resolution.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 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. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information reasonably available to the Owner and as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update 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. 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's representative is the Growth Organization of Topeka, Inc. (Go Topeka). The Owner's representative may be changed by the Owner delivering to the Architect written notice of a replacement representative. 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. No action taken by an Owner under this section shall relieve the Architect of its obligations pursuant to this Agreement.

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§ 5.4 The Owner shall 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 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.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to 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 subsurface conditions, with written reports and appropriate recommendations.

§ 5.6 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 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 maintain professional liability insurance as appropriate to the services provided.

§ 5.7 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.

§ 5.8 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.

§ 5.9 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.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 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.

§ 5.12 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. Unless otherwise stated, Architect and its consultants shall have access to the site for activities necessary for the performance of the Work. The Architect and its consultants shall take precautions to minimize damage to the site due to these activities. The Architect will coordinate all Work with Contractor or Owner, scheduling in advance with Contractor or Owner activities that will limit access to any particular part of the site so as to enable Contractor or Owner to make all necessary arrangements to accommodate Architect's activities.

ARTICLE 6 COST OF THE WORK

§ 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. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, 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 is provided in Initial Information, and may 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, 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 make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. 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 requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, 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, without additional compensation, 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. 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

§ 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. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 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 Upon execution of this Agreement, 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, including prompt payment of all sums when due the Architect hereunder not subject to a good faith bona fide dispute, under this Agreement. Upon final payment by the Owner of the amounts due the Architect under this Agreement upon completion of the

work or termination of the Agreement, the license shall become irrevocable. 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 material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service 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 author 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.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement 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, except to the extent such claims are for indemnity, contribution or recoupment.

§ 8.1.2 Subject to full compliance with the Kansas Fairness in Public Construction Act, 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 A201-2007, 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.

(Paragraph deleted)

§ 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 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. A request for resolution shall be made in writing, delivered to the other party to the Agreement. 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 a 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

(Paragraphs deleted)

Litigation in a court of competent jurisdiction

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect of amounts not subject to good faith dispute in accordance with this Agreement that were part of timely, properly completed, undisputed applications for payment, and such failure shall continue to seven (7) days after receipt of written notice from the Architect, 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 Architect shall be paid 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 30 consecutive days or 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 fourteen (14) 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. When the Architect has not performed or has unsatisfactorily performed the contract, payment may be withheld to the extent the Owner deems it necessary to protect itself against damages or loss due to the actions or inactions of Architect. Upon termination for cause, subject to withholding as allowed by law and under this agreement, Architect shall be eligible to receive payment for its applicable fees for its services performed and accepted as of the date of termination. The Architect will not receive any fees, expected profits or other compensation in relation to work that has not been performed and accepted by Owner.

§ 9.5 The Owner may terminate this Agreement upon not less than fourteen (14) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated only for services performed prior to termination, together with Reimbursable Expenses then due. The Architect will not receive any fees, expected profits or other compensation in relation to work that has not been performed.

§ 9.7 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 11.9.

(Paragraph deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located. All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, 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.

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§ 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. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, the Architect shall immediately report that presence to the Owner in writing.

§ 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.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

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

Two Hundred Sixty Thousand Dollars and Zero Cents (\$260,000.00)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

Additional services shall be negotiated at the time the services are identified or requested by the owner.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

Other additional services shall be negotiated at the time the services are identified or requested by the owner.

§ 11.4 Compensation for 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 five percent (5 %), or as otherwise stated below:

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

Schematic Design Phase	Fifteen	percent (15	%)
Design Development Phase	Fifteen	percent (15	%)
Construction Documents Phase	Forty-five	percent (45	%)
Bidding or Negotiation Phase	Five	percent (5	%)
Construction Phase	Twenty	percent (20	%)
<i>(Row deleted)</i>				
Total Basic Compensation	one hundred	percent (100	%)

(Table deleted)
(Paragraphs deleted)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic 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; other than between office of business and Owners offices and Project site;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets; other than between design team and Owners offices, or radius there of 60 miles
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents (applicable to plan review, bid documents, financial procurement assistance, agency reviews and presentation 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, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All sales taxes levied on professional services and on reimbursable expenses;

(Paragraph deleted)

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred.

§ 11.8.3 The Architect shall assist the Owner in establishing a budget for reasonable reimbursable expenses that may occur for items 11.8.1, excluding 11.8.1.8, that such expenses shall be paid from if/when occur and authorized.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Value of work completed, plus 10%

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 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.

§ 11.10.2 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

(Paragraphs deleted)

at the rate of Five percent (5%) per annum.

§ 11.10.3 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.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 Not Used.

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§ 12.2 INDEMNITY

§ 12.2.1 To the fullest extent permitted by Law, the Architect shall hold harmless and indemnify the Owner and any of its officers, directors, employees, and their successors (collectively the "Indemnified Parties"), from and against liability, loss, costs, and expenses arising out of or resulting from the negligent performance of the Architect's Services under this Agreement to the extent caused by the negligent act or omission (i) of the Architect, or (ii) of the Architect's Consultants, or (iii) the agents, servants, or (iv) employees of Architect and any Architect's Consultant, to the extent such claim, damage, loss or expense is not caused by the negligence or fault of any of the Indemnified Parties. Nothing contained herein shall be construed to require Architect to indemnify the Indemnified Parties from liability, losses, costs and expenses proximately caused by the Indemnified Parties, or each of them. The above-said right of indemnity shall be in addition to other rights of indemnity that any of the Indemnified Parties may possess. The indemnification obligations of Architect under this Agreement shall survive termination of this Agreement or final payment hereunder.

§ 12.2.2 In any and all claims against the Owner by any employee of Architect or any of Architect's Consultants, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnity obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for Architect or any of Architect's Consultants under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§ 12.3 KANSAS LEGAL REQUIREMENT

§ 12.3.1 If the successful firm is a corporation organized outside the State of Kansas, it will be necessary to qualify with the Secretary of State of Kansas to do business within the State (K.S.A. 17-7301 K.S.A. seq.). Nonresident individuals or partnerships and nonresident corporations not already registered with the Secretary of State are required to register with the Director of Revenue, to file a bond to assure payment of taxes, and to pay a fee of \$10 for each contract or subcontract with exceeds \$3,000 (K.S.A. 79-1008 to 79-1015).

§ 12.3.2 Nonresident contracts are required to appoint an agent for service of process who is a resident of the county in which the work is to be performed. It is unlawful for any payment to be made until the appointment of a local agent has been filed with the Clerk of the District Court (K.S.A. 16-113).

§ 12.3.3 Architect shall not in any way, directly or indirectly, discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry or any other basis prohibited under the Kansas Act Against Discrimination.

§ 12.3.4 Consistent with K.S.A. 44-1030, the Architect agrees as follows:

- .1 The Architect shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, national origin, ancestry or any other basis prohibited under the Kansas Act Against Discrimination.
- .2 In all solicitations or advertisements for employees, the Architect shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission").
- .3 If the Architect fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Architect shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.
- .4 If the Architect is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Architect shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the Owner.
- .5 The Architect shall include the provisions of Clauses (1) through (4) in every consulting agreement, subcontract or purchase order so that provisions will be binding upon such consultant, subcontractor or vendor.

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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 Owner and Architect.

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2
(Paragraphs deleted)
Exhibit A – Section 4.1 Description of Additional Services

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

OWNER

ARCHITECT

Larry E. Wolgast

Charles Smith

(Signature)

(Signature)

LARRY E. WOLGAST

Charles Smith, AIA, Treasurer

(Printed name and title)

JEDD
CHAIRMAN

(Printed name and title)



Init.

User Notes:

(1496930118)

Article 4 Additional Services Descriptions (AIA B101™-2007 Owner-Architect Agreement)

4.1.1 – Programming/Master Plan: Provided (limited)

Typically refers to extended effort to research and document the needs and requirements of a project from inception. This agreement includes a review and refinement of the owner's needs and goals for the facilities as described and illustrated in the Project RFQ, defines priorities, refines budget, explores and establishes overall project concept planning. Should extensive change in direction or programmatic documentation of needs and requirements be necessary, such would be added as an Additional Service.

4.1.2 – Multiple Preliminary Design: Provided (limited)

Typically refers to providing multiple plausible design solutions/concepts differing in approach or layout of primary building components and/or site configuration to assist the design team and owner to reach consensus in program achievement and budget. Successful consensus is typically achieved within 2-3 primary concept Designs. This does not limit the amount of component of concept review and evaluation from consultant's previous projects to test program and costs models. Additional design studies can be provided as an additional service.

4.1.3 – Measured Drawings: Provided (limited)

Typically refers to providing detailed measurements and documentation of the existing building plan, elevation, sectional, detail and systems. The design team will utilize existing drawings and plans provided by the owner for planning purposes and will provide on-site confirm areas impacted by project design(s) as necessary for construction documents. The contractor will be required to substantiate all existing physical conditions prior to bidding, installation and fabrication. Design team is not responsible for components encapsulated or not exposed to sight, components characteristics or capacities not readily notable or provided by owner. Field documentation of site buildings and conditions will be done to the extent necessary to provide documentation for new work.

4.1.4 – Existing Facilities Surveys: Not Provided

Typically refers to detailed performance, life expectancy, and life cycle evaluation, testing and reporting of an all elements of an existing facility, i.e. "facilities audit". Typical basic services standard of care will evaluate conditions in areas of improvement, modifications and/or expansion.

4.1.5 – Site Evaluation and Planning (B203™-2007): Not Provided

This scope is related to re-zoning and plat work as required by Local Planning Agencies when work related to Public Right-of-Ways, Infrastructure, Utilities or other Public works, and/or related to the development of unplatted land, re-platting of land for change of use, etc. This type of scope is not anticipated with current/existing site at the time of this agreement. This agreement does include the requirement for the design team to coordinate with owner to achieve any permits for construction. Should public right-of-way improvements be required or other similar scopes outside the project scope and budget, additional fees will be negotiated at that time.

4.1.6 – Building Information Modeling: Not Provided

Scope can include modeling of all components of the project, integrated systems design, documentation and/or facilities management. No specific requirements or need required or beyond basic services, in this agreement. Architectural, Structural and MEP work will be performed in linked BIM (Revit) models to the

extent necessary to convey construction documents in a 2D format. All components of a building will not be fully modeled or quantified in the BIM model.

4.1.7 – Civil Engineering: Provided

Civil Engineering Scope is included as a portion of Architects Scope and Fees for work on owner's site only for preparation of the immediate site surrounding the building and for the scope of utilities on site identified during the programming phase. Additional services to support expanded site development and may be awarded as future additional services. Expanded scope such as extensive parking lots, public right of ways/utilities, etc. will be Additional Services, if necessary, per. 4.1.5.

4.1.8 – Landscape Design: Provided

Concept design work for location and general types of/concept of plantings and amenity are included, in work of 4.1.1-4.1.2 and 4.1.7. The development of Construction documents for the project site and immediate adjacent areas is included for site design services included in this agreement.

4.1.9 – Architectural Interior Design (B252™-2007): Not Provided

252B Scope refers to contract design services for leasehold improvements type of services, FF&E, Art and decoration, which are not applicable to this project. Basic services of this agreement cover interior room layout, detailing and finishes for the building construction contract.

4.1.10 – Value Analysis (B204™-2007): Not Provided

Scope expands value analysis beyond the standard of care provided in basic services.

4.1.11 – Detailed Cost Estimating: Not Provided

Scope defined as "Detailed" cost estimating in addition to HTK's Team cost estimating practices, referring to substantial detail cost estimating provided by a third party estimating consultant, utilizing detailed material and labor take-offs methods along with benchmarking industry analysis. Such services may be added as an additional services and fees when requested.

4.1.12 – On-Site Project Representation: Not Provided

On site project representation describes representation above requirements of basic services; such as, extended on-site representation, project program management duties, etc. Further, expanded Scope and Fees may be added as additional services when requested. Basic services standard of care for on site representation includes Architect attending monthly construction progress meetings and performing closeout documentation. Architect's consultants will attend meetings to the extent the current scope of construction requires their presence.

4.1.13 – Conformed Construction Documents: Not Provided

Electronic Documents revised to reflect changes during the bid process. Conformed Documents would then be reissued to the successful bidder as a part of the Owner-Contractor agreement and noted as "conformed bid documents". Such services are typical to projects bid and constructed from electronic documents. Owner and Architect Liabilities should be carefully considered.

4.1.14 – As-Designed Record Drawings: Not Provided

Electronic Documents formatted and compiled into electronic data files compatible with Owner's Facilities Management or Planning Standards upon completion of Bid Documents.

4.1.15 – As Constructed Record Drawings: Provided

Electronic Documents formatted and compiled into electronic data files compatible with Owner's Facilities Management or Planning Standards (.dwg files), including all as constructed information provided from the contractor, and documented changes to the contract documents via Change Orders, RFI, Change Directives, etc., upon completion of construction. The Contractor is required to deliver hard copy and PDF of "on-site" record documents required of the contractor(s) to keep, maintain, and deliver to the Architect upon completion of construction, for inclusion into the Record Documents.

4.1.16 – Post Occupancy Evaluation: Provided

Building performance Evaluation and Inspections at an agreed prescribed period of time after construction, typically 1-year. Requires a building walkthrough a necessary at one-year anniversary of substantial completion to identify any outstanding performance of warranty issues and convey to design and construction team for resolution.

4.1.17 – Facility Support Services: Not Provided

Scope typically refers to outsourcing facilities operations, maintenance and planning types of services to assist Owner's staff or lack thereof.

4.1.18 – Tenant Related Services: Not provided

Design and Documentation Services for tenants of building owner's (Client).

4.1.19 – Coordination of Owner's Consultants: Not Provided

Not provided beyond basic services. Basic services include coordinating efforts, but do not include managing owner's consultants, including work thereof as a portion of construction documents, or managing/coordinating the owner's consultant responsibility through design and construction.

4.1.20 – Telecommunications/data Design/Access Control/A-V: Provided

Scope refers to the design of systems pathways and terminations for noted systems. Scope may include but not limited to the design and installation of Systems, paths, equipment, software, etc. related to building user communications, access control, safety and security, etc. This agreement scope is limited to the design and installation of systems pathways, outlets/terminations and built in devices such as "REX" (motion-sensors) at exits, access control devices and systems, etc. integrated specifically into the General Construction of the building. Scope does not include design engineering, equipment or software for building or campus data servers, phone systems, paging systems, etc. This limited scope is not required to be performed by "certified" designer, however shall conform to industry design and testing standards/requirements. Basic services does included working with and coordinating with owner and/or owner's consultant(s).

4.1.21 – Security Evaluation and Planning (B206™-2007): Not Provided

B206 refers to security sensitive or intensive facilities such as Data Centers, Disaster Recovery Centers, Detention Facilities, Facilities controlled by Homeland Security, etc. where design and performance of systems are scrutinized for the health safety and welfare of the facility, it's occupants, material, systems, data, etc..

4.1.22 – Commissioning (B211™-2007): Provided Limited.

B211 commissioning is NOT included in this project commissioning scope as it refers to significant commissioning utilizing third party consultants/contractors, with services during design, documentation and construction. A must for LEED certified buildings, which is not included. Included services for this agreement are limited to start-up commission of HVAC, access control, and other building contractor

provided special systems, and shall be during and primarily toward the end of construction. Services may be provided by Project MEP Engineer. Services provides basic commissioning of systems and/or components through specifications outlining start-up, testing and training of the building operations to identify complete and fully operation systems and performance at occupancy.

4.23.1 – Extensive Environmental Design: Not Provided

Scope refers to design beyond the basic standard of care when requested or required. Such applications would include projects seeking low carbon footprints, historic or ecological sensitive sites, projects requiring ecological or environmental remediation by design or agency required.

4.1.24 – LEED Certification (B214™-2007): Not Provided.

Design and oversee the construction of a project toward a goal of obtaining USGBC LEED Certification. Scope includes designing and documenting the design and construction of the building within the rigors and requirements of the GBCI LEED Certification Requirements. HTK has LEED certified Designers on staff and can provide these services, upon request. LEED certification can increase design and construction costs and should be considered and added to project during concept design & budgeting phase. Should LEED certification be requested or added, additional fees of 1-3% for design and construction services should be anticipated for the Design Team. Construction Costs can increase from as little as 5% or as much as 30% or significantly more. Third Party Commission Services per 4.22.1 and Environmental Design per 4.23.1 cost would also need to be established. Basic Services include at standard of care and best practices within the constraints of the budget for higher performing buildings.

4.1.25 – Fast-track Design services: Not Provided.

Typical refers to projects under significant time constraints where accelerated design and documentation process is necessary to begin construction prior to completion of documents. Such projects can be delivered traditionally under multiple bid packages where the Architect or other consultants manage the contractors as Additional Services or delivered via Design Build or Construction Managed projects; all of which accelerated design and multiple bid packages from the design team. Such services have not been identified for this project at the time of the agreement, but can be added when identified as necessary. Early bid package for demolition and abatement shall be included in the provided services.

4.1.26 – Historic Preservation (B204™-2007): Not Provided.

B204 scope applies to projects with significant historic concern and/or regulatory requirements.

4.1.27 – Furniture, Furnishings, and Equipment Design (B253™-2007): Not Provided.

B253 scope Refers to interior design, specification and procurement services for Owner's loose furniture, furnishings and equipment. Architect will provide conceptual layout of loose furniture and equipment. Should services for furniture procurement be necessary, it will be provided as additional services.

4.1.28 – Site Survey: Not Provided.

Site survey to identify site features such as topography, utilities, improvements, building setbacks or easements, vegetation and similar features or restrictions that would impact and/or influence the planning, documentation, and construction of the project buildings, utilities, improvements and landscaping can be provided as additional services. Limited survey will be provided around building perimeter and utility extensions. A complete site survey of the entire site is not provided.

4.1.29 – Pre Construction Geotechnical: Not Provided.

Services to provide pre construction geotechnical information can be provided as additional services.