



# AIA<sup>®</sup> Document B103<sup>™</sup> – 2017

## Standard Form of Agreement Between Owner and Architect for a Complex Project

**AGREEMENT** made as of the \_\_\_\_\_ day of January in the year 2019  
(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 Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768  
913-971-8600

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

Finkle Williams, Inc.  
7007 College Blvd. Suite 415  
Overland Park, KS 66211  
913-498-1550

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

Olathe Fire Training Center  
Approx Address: 710 N Hedge Lane, Olathe, KS 66061

This project involves the programming, planning, design, and construction of a new fire training facility and directly related site improvements. It is anticipated the project will include a 'class a' burn tower, relocated modular prop, administrative and storage building (including restrooms) and an outdoor training area.

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.")*

§ 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.)*

Program to be developed within this 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 Olathe Fire Training Center will be located on City-Owned Property on East side of N. Hedge Lane, North of 131<sup>st</sup> Street. The exact location and layout of the site is to be determined as part of the scope of the project.

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

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

The Owner's budget for the Cost of Work is currently established at \$1,650,000

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

.1 Design phase milestone dates, if any:

Init.

Begin Design .....February 2019  
Complete Design .....July 2019

**.2 Construction commencement date:**

Commencement of construction is tentatively anticipated for 4<sup>th</sup> Quarter 2019. The specific date will be determined at a later date once a Contractor has been selected.

**.3 Substantial Completion date or dates:**

Substantial completion of construction is tentatively anticipated for 1<sup>st</sup> Quarter 2020. The specific date will be determined at a later date once a Contractor has been selected and construction schedule set.

**.4 Other milestone dates:**

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project:  
(Identify method such as competitive bid or negotiated contract.)

Competitive Bid

**§ 1.1.6** The Owner's requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction are set forth below:  
(List number and type of bid/procurement packages.)

None anticipated.

**§ 1.1.7** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

The City values sustainable site development and sustainable building construction in order to create an operationally sustainable facility and to lessen the impact on the local and global environment. Therefore, the City will seek to develop this project in a manner that will allow us to demonstrate our commitment to these sustainable initiatives. Environmentally responsible design shall be considered, but not limited to, issues such as building shell; natural daylighting opportunities; types of building materials and their content, long term durability, energy saving characteristics, and regional availability; energy efficient electrical and mechanical systems, equipment, and fixtures; water conservation opportunities; and appropriate landscape materials and plantings. The pursuit of LEED certification for this facility is not a requirement for this project.

**§ 1.1.7.1** [Intentionally Deleted]

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.4:  
(List name, address, and other contact information.)

Chad Foster, AIA, Senior Building Design Project Manager  
City of Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768  
Telephone Number: 913-971-9107  
Email Address: ccfooster@olatheks.org

**§ 1.1.9** 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:

Init.

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

Other City of Olathe staff as necessary.

**§ 1.1.10** The Owner shall retain the following consultants and contractors:

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

**.1 Cost Consultant:**

None.

**.2 Scheduling Consultant:**

None.

**.3 Geotechnical Engineer:**

Terracon Consultants

**.4 Civil Engineer:**

None.

**.5 Other, if any:**

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

General Contractor – Unknown at time of execution of this Agreement.

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

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

Ellen Foster, AIA  
Finkle Williams, Inc.  
7007 College Blvd, Suite 415  
Overland Park, Kansas 66211  
913-498-1550 (Ex. 103)  
efoster@finklewilliams.com

**§ 1.1.12** The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

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

**§ 1.1.12.1** Consultants retained under Basic Services:

**.1 Structural Engineer:**

Michael J. Falbe, P.E.  
Bob D. Campbell & Co  
4338 Bellevue Ave.  
Kansas City, MO 64111  
816-531-4144

**.2 Mechanical Engineer:**

Lankford Fendler  
1730 Walnut  
Kansas City, Mo 64108

Init.

816-221-1411

**.3 Electrical Engineer:**

Lankford Fendler  
1730 Walnut  
Kansas City, Mo 64108  
816-221-1411

**.4 Civil Engineer:**

Roger Barret, LEED AP SK Design Group, Inc.  
4600 College Boulevard  
Suite 100  
Overland Park, KS 66211  
913-451-1818

**.5 Landscape Architect:**

Cale Doornbos, PLA, ASLA  
SWT Design  
1925 Central Street  
Suite 202  
Kansas City, MO 64108

**.6 Fire Station Consultant:**

Brian Harris, AIA LEED AP  
TCA Architecture - Planning  
6211 Roosevelt Way NE  
Seattle, WA 98115

**.7 Other:**

Cost Estimating  
Constructing Management Resources (CMR)  
5201 Johnson Drive  
Mission, KS 66205

**§ 1.1.12.2 Consultants retained under Supplemental Services:**

**§ 1.1.13 Other Initial Information on which the Agreement is based:**

None

**§ 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. 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 – See Owner's Insurance Requirements, Exhibit A.

§ 2.5.2 Automobile Liability – See Owner's Insurance Requirements, Exhibit A.

§ 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 required for the individual policies. See Owner's Insurance Requirements, Exhibit A.

§ 2.5.4 Workers' Compensation – See Owner's Insurance Requirements, Exhibit A.

§ 2.5.5 [Intentionally Deleted]

§ 2.5.6 Professional Liability – See Owner's Insurance Requirements, Exhibit A.

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

§ 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

§ 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. Basic Services shall also include a review of the existing site to become fully knowledgeable of the existing conditions; a review and analysis of the Owner's budget for the Project; preliminary design study; site planning and design; civil engineering; architectural interior design; space planning for furnishings and equipment; planning and design for access control, CCTV, and burglar alarm. 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 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, anticipated dates when cost estimates or design reviews may occur, and 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 and Scheduling Consultant, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Owner and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 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.

§ 3.1.6 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.

§ 3.1.7 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.

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

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

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

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

**§ 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, and consistent with the Owner's sustainability goals and initiatives to be defined by the Owner and with consultation with the Architect during the planning and design phases.

**§ 3.2.6** The Architect shall submit the Schematic Design Documents to the Owner. The Architect shall meet with the Owner to review the Schematic Design Documents.

**§ 3.2.7** Upon receipt of the Cost Consultant's cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

### **§ 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, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

**§ 3.3.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner. The Architect shall meet with the Owner to review the Design Development Documents.

**§ 3.3.3** [Intentionally Deleted]

### **§ 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 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, if necessary, 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** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner. The Architect shall meet with the Owner to review the Construction Documents.

**§ 3.4.5** Upon receipt of the Cost Consultant's cost estimate during the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing or reviewing contracts for construction, but the Architect will not be providing legal advice to the Owner.

#### **§ 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, if necessary:

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, upon the Owner's written authorization, the Architect shall consider a reasonable number of requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

#### **§ 3.5.3 Negotiated Proposals**

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

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

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

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

### **§ 3.6 Construction Phase Services**

#### **§ 3.6.1 General**

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and

Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

**§ 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 at intervals appropriate to the stage of construction, 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 or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

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

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

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

**§ 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 materials and labor for which the Contractor is requesting payment have been incorporated into the Project or suitably stored as allowed by the Contractor’s agreement with the Owner, 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.

**§ 3.6.3.4** The Architect agrees to coordinate with the Owner and Contractor on a schedule for the review of the Contractor's Applications for Payment and agrees to take such action on the Application for Payments with promptness so as not to cause delay in the Owner's ability to issue prompt payment to the Contractor as required by the Agreement between the Owner and Contractor.

#### **§ 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 procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

### § 3.6.5 Changes in the Work

§ 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. Whenever possible without causing a delay to the construction of the Work, the Architect shall advise the Owner on all such changes in the Work being authorized or contemplated to be authorized.

§ 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:

1. conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
2. issue Certificates of Substantial Completion;
3. forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
4. issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents, and to the Architect's knowledge and belief, all labor and materials for which the Contractor is requesting final payment have been incorporated into the Project.

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

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

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

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

### § 4.1 Supplemental Services

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

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

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 [Intentionally Deleted]	
§ 4.1.1.2 [Intentionally Deleted]	

(Row deleted)

§ 4.1.1.3	Measured drawings	
§ 4.1.1.4	Existing facilities surveys	
§ 4.1.1.5	[Intentionally Deleted]	

(Row deleted)

§ 4.1.1.6	Building Information Model management responsibilities	
§ 4.1.1.7	Development of Building Information Models for post construction use	
§ 4.1.1.8	[Intentionally Deleted]	
§ 4.1.1.9	[Intentionally Deleted]	
§ 4.1.1.10	[Intentionally Deleted]	

(Row deleted)

§ 4.1.1.11	Value analysis	
§ 4.1.1.12	Cost estimating	
§ 4.1.1.13	On-site project representation	
§ 4.1.1.14	Conformed documents for construction	
§ 4.1.1.15	As-designed record drawings	
§ 4.1.1.16	As-constructed record drawings	Architect
§ 4.1.1.17	Post-occupancy evaluation	
§ 4.1.1.18	Facility support services	
§ 4.1.1.19	Tenant-related services	
§ 4.1.1.20	Architect's coordination of the Owner's consultants	
§ 4.1.1.21	[Intentionally Deleted]	
§ 4.1.1.22	[Intentionally Deleted]	

(Row deleted)

§ 4.1.1.23	Commissioning	
§ 4.1.1.24	Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25	Historic preservation	
§ 4.1.1.26	Furniture, furnishings, and equipment design	Architect
§ 4.1.1.27	Other services provided by specialty Consultants	
§ 4.1.1.28	Other Supplemental Services	
§ 4.1.1.29	Site Surveying	Owner

## § 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.)*

As-constructed record drawings (4.1.1.16) will be provided by the Architect as a Supplemental Service. Because these record drawings will be based on unverified information provided by the Contractor and others, upon which the Architect is entitled to rely, the Architect will not be able to seal the record drawings or assure their accuracy.

Furniture, furnishings, and equipment design and specification (4.1.1.26) will be provided by the Architect as a Supplemental Service.

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

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

Site Surveying (4.1.1.29) will be provided by the Owner.

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

#### **§ 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, or bid packages in addition to those listed in Section 1.1.6;
- .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 [Intentionally Deleted]
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 [Intentionally Deleted]
- .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 [Intentionally Deleted]
- .2 Responding to the Contractor's excessive 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; or
- 3 [Intentionally Deleted]
- 4 Evaluating an extensive number of Claims as the Initial Decision Maker.
- 5 [Intentionally Deleted]

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

- 1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- 2 Five ( 5 ) visits to the site by the Architect during construction
- 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.

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

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

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 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 be responsible for creating the overall Project schedule. The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

**§ 5.3** 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.

**§ 5.3.1** The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

**§ 5.4** 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. The authority of the Owner's Representative to make decisions on behalf of the Owner shall be limited to those decisions customarily allowed in the capacity of the representative's position. Certain decisions of the Owner may require approval by other staff, commissions, or the governing body of the City of Olathe. The Owner's Representative shall not be required to make decisions on matters which the representative is not authorized to make.

§ 5.5 The Owner shall furnish as may be available any site investigations and written legal description that may be beneficial to the Architect in understanding the existing conditions of the Project site.

§ 5.6 The Owner shall 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. The Architect and Owner agree to cooperate in defining the specific requirements and limits of geotechnical testing of subsurface conditions.

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

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

§ 5.9 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.

§ 5.10 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.

§ 5.11 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. However, in no event shall any Owner-related legal, accounting, insurance, and or audit services be provided on behalf of the Consultant providing such services to the Owner, nor shall Consultant serve and other role than as an independent contractor of the Owner.

§ 5.12 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.

§ 5.13 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. The Owner shall be entitled to communicate directly with the Contractor and any Contractor or Consultant with whom the Owner has a direct contract without having to do so through the Architect. The Owner shall endeavor to include the Architect in such communication when the Owner, in its sole discretion, deems that communication necessary.

§ 5.14 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.

§ 5.15 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.

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

## ARTICLE 6 COST OF THE WORK

§ 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 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 is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

**§ 6.3** The Owner shall require the Cost Consultant's estimates to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

**§ 6.4** If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Owner, 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.

**§ 6.5** If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .4 implement any other mutually acceptable alternative.

**§ 6.6** If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

**§ 6.7** After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## **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.

**§ 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** For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

**8.1.3.1 Indemnification and Hold Harmless:** For purposes of this Agreement, Architect agrees to indemnify and hold harmless Owner from any and all Loss to the extent Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Architect or its subcontractors.

**8.1.3.2 Comparative Fault & Contributory Negligence:** It is agreed as a specific element of consideration of this Agreement that this indemnity will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of Owner or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of Owner's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Architect's obligation hereunder will not include amounts attributable to the fault or negligence of Owner or any Third Party for whom Architect is not responsible.

**8.1.3.3 Damage Limitations:** In the case of any claims against Owner indemnified under this Agreement, by Architect or its subcontractors, the indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Architect or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**8.1.3.4 Negligence by the Owner:** Architect is not required hereunder to indemnify and hold the Owner or its agents harmless from liability based on Owner's negligence.

**§ 8.1.4** 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 which cannot be resolved by direct negotiations between the Parties shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. 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.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by 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. Mediation shall proceed in advance of legal or equitable 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. Any dispute under this Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas, or the closest Court of competent jurisdiction thereto.

**§ 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

☐ 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.

*(Paragraphs deleted)*

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, the Architect shall provide written notice to the Owner of non-payment and if payment is not received by the Architect within seven (7) business days thereafter, then such failure shall be considered as substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services.

In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven 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.

*(Paragraphs deleted)*

§ 9.7 [Intentionally Deleted]

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

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

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be construed and enforced in accordance with the laws of the State of Kansas.

§ 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 as amended by the Owner. If Owner amends AIA Document A201-2007, Owner will provide a copy of the amended document to the Architect.

§ 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 party..

§ 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.

§ 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. When appropriate and at the Owner's sole discretion, Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential unless withholding such information would violate the law (including but not limited to the Kansas Open Records Act), create the risk of significant harm to the public, or prevent the Owner or Architect from establishing a claim or defense in an adjudicatory proceeding, and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum  
(Insert amount)

(Paragraphs deleted) \$162,700

§ 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.)

Included in stipulated sum above

§ 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.)

See Exhibit B for Hourly Rate Schedule

§ 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 TBD percent ( TBD %), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

See Exhibit B for Hourly Rate Schedule

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

Schematic Design Phase	Twenty	percent (	20	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Thirty Five	percent (	35	%)
Procurement Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
(Row deleted)				
Total Basic Compensation	One Hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

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

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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

See Hourly Rate Schedule, Exhibit B

#### § 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 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of



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

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants. A budget for Reimbursable Expenses is included in the Stipulated Sum in Section 11.1.1.

**§ 11.9**

*(Paragraphs deleted)*  
[Intentionally Deleted]

**§ 11.10 Payments to the Architect**

**§ 11.10.1** [Intentionally Deleted]

*(Paragraphs 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, provided the invoices for the Architect's services when submitted are found to be acceptable by the Owner. Within five (5) business days the Owner shall notify the Architect of any concerns with the Architect's invoice which may need to be corrected prior to the Owner making payment. Amounts unpaid thirty-one (31) 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.)*

One and one-half percent (1.50%) (or the maximum allowable by law, whichever is lower) of the past due amount per month (18% annual interest rate) from the invoice date.

**§ 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 mediation or litigation 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 submitted to the Owner at the time of submitting all applicable invoices.

**§ 11.10.5** In the event Owner becomes credibly informed that any representations of Architect provided in its monthly invoices are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Architect until the inaccuracy and the cause thereof, is corrected to the Owner's reasonable satisfaction. In the event Owner questions some element of an invoice, that fact shall be made known to the Architect within five (5) business days after receipt of the invoice by the Owner. Architect will help to effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by the Owner shall be paid to the Architect in accordance with terms of this Agreement.

**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.)*

**.1 LICENSING REQUIREMENTS**

The Architect must be authorized to do business in the State of Kansas. If the Architect is a corporation organized outside the State of Kansas it shall review its authorization with the State of Kansas and if necessary, file the required documentation with the State of Kansas in order to receive

authorization to do business in the State of Kansas. The Architect, if organized outside the State of Kansas, must furnish evidence to the Owner of their authority to do business in the State of Kansas. Such evidence must be furnished to the Owner prior to any Contract award.

The Architect and all sub-contractors performing design and construction work on this project shall meet all licensing requirements of the City of Olathe for the work which they intend to perform.

## **.2 AFFIRMATIVE ACTION / OTHER LAWS**

During the performance of this Agreement, the Architect agrees that:

- a. Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) 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 age;
- b. 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 commission;
- c. if the Architect fails to comply with the manner in which the Architect 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 canceled, terminated or suspended, in whole or in part, by the City without penalty;
- d. 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 canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by the City with Architect if:

- a. Architect employs fewer than four employees during the term of such contract; or
- b. Architect's contract with the City total \$10,000 or less in aggregate.

The Architect further agrees and acknowledges that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

## **.3 NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

## **.4 INDEPENDENT CONTRACTOR**

The Architect is an independent contractor and as such is not an agent or employee of the City.

## **.5 COVENANT AGAINST CONTINGENT FEES**

Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the



Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**.6 COMPLIANCE WITH LAWS**

Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Work or the Project at the time Services are rendered, including but not limited to The Kansas Fairness in Public Construction Contract Act, K.S.A. 16-1901 et seq. Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

**.7 TITLES, SUBHEADS AND CAPITALIZATION**

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**.8 SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**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 B103™-2017, Standard Form Agreement Between Owner and Architect
- .2** [Intentionally Deleted]

*(Paragraphs deleted)*

- .3** Exhibits:  
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

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

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

Exhibit A – City of Olathe, Kansas Insurance Requirements

Exhibit B – Hourly Billing Rate Schedule

Exhibit C – Letter Proposal from Finkle + Williams to City of Olathe date January 9, 2019

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

Init.

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

**OWNER**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

**ATTEST**

\_\_\_\_\_  
(City Clerk)

(Seal)

**APPROVED AS TO FORM**

\_\_\_\_\_  
(City Attorney / Deputy City Attorney / Assistant City Attorney)

**ARCHITECT**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name)

\_\_\_\_\_  
(Title)

Init.

/

# Additions and Deletions Report for AIA® Document B103™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:08:02 ET on 01/11/2019.

## PAGE 1

**AGREEMENT** made as of the                      day of January in the year 2019

...

City of Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768  
913-971-8600

...

Finkle Williams, Inc.  
7007 College Blvd. Suite 415  
Overland Park, KS 66211  
913-498-1550

...

Olathe Fire Training Center  
Approx Address: 710 N Hedge Lane, Olathe, KS 66061

This project involves the programming, planning, design, and construction of a new fire training facility and directly related site improvements. It is anticipated the project will include a 'class a' burn tower, relocated modular prop, administrative and storage building (including restrooms) and an outdoor training area.

## PAGE 2

Program to be developed within this scope of services.

...

The Olathe Fire Training Center will be located on City-Owned Property on East side of N. Hedge Lane, North of 131<sup>st</sup> Street. The exact location and layout of the site is to be determined as part of the scope of the project.

...

The Owner's budget for the Cost of Work is currently established at \$1,650,000

## PAGE 3

Begin Design .....February 2019  
Complete Design .....July 2019

...

Commencement of construction is tentatively anticipated for 4<sup>th</sup> Quarter 2019. The specific date will be determined at a later date once a Contractor has been selected.

Substantial completion of construction is tentatively anticipated for 1<sup>st</sup> Quarter 2020. The specific date will be determined at a later date once a Contractor has been selected and construction schedule set.

Competitive Bid

None anticipated.

The City values sustainable site development and sustainable building construction in order to create an operationally sustainable facility and to lessen the impact on the local and global environment. Therefore, the City will seek to develop this project in a manner that will allow us to demonstrate our commitment to these sustainable initiatives. Environmentally responsible design shall be considered, but not limited to, issues such as building shell; natural daylighting opportunities; types of building materials and their content, long term durability, energy saving characteristics, and regional availability; energy efficient electrical and mechanical systems, equipment, and fixtures; water conservation opportunities; and appropriate landscape materials and plantings. The pursuit of LEED certification for this facility is not a requirement for this project.

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

Chad Foster, AIA, Senior Building Design Project Manager  
City of Olathe, Kansas  
100 E. Santa Fe  
P.O. Box 768  
Olathe, KS 66051-0768  
Telephone Number: 913-971-9107  
Email Address: ccfooster@olatheks.org

**PAGE 4**

Other City of Olathe staff as necessary.

None.

None.

Terracon Consultants

None.

General Contractor – Unknown at time of execution of this Agreement.

Ellen Foster, AIA  
Finkle Williams, Inc.  
7007 College Blvd, Suite 415  
Overland Park, Kansas 66211  
913-498-1550 (Ex. 103)  
efoster@finklewilliams.com

Michael J. Falbe, P.E.  
Bob D. Campbell & Co  
4338 Belleview Ave.  
Kansas City, MO 64111  
816-531-4144

Lankford Fendler  
1730 Walnut  
Kansas City, Mo 64108  
816-221-1411

PAGE 5

Lankford Fendler  
1730 Walnut  
Kansas City, Mo 64108  
816-221-1411

.4 Civil Engineer:

Roger Barret, LEED AP SK Design Group, Inc.  
4600 College Boulevard  
Suite 100  
Overland Park, KS 66211  
913-451-1818

.5 Landscape Architect:

Cale Doornbos, PLA, ASLA  
SWT Design  
1925 Central Street  
Suite 202  
Kansas City, MO 64108

.6 Fire Station Consultant:

Brian Harris, AIA LEED AP  
TCA Architecture - Planning  
6211 Roosevelt Way NE  
Seattle, WA 98115

.7 Other:

Cost Estimating  
Constructing Management Resources (CMR)  
5201 Johnson Drive  
Mission, KS 66205

None  
**PAGE 6**

~~§ 2.5.1 Commercial General Liability with policy limits of not less than — (\$ —) for each occurrence and — (\$ —) in the aggregate for bodily injury and property damage. See Owner's Insurance Requirements, Exhibit A.~~

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than — (\$ —) 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. See Owner's Insurance Requirements, Exhibit A.~~

~~§ 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 required for the individual policies. See Owner's Insurance Requirements, Exhibit A.~~

~~§ 2.5.4 Workers' Compensation at statutory limits. See Owner's Insurance Requirements, Exhibit A.~~

~~§ 2.5.5 Employers' Liability with policy limits not less than — (\$ —) each accident, — (\$ —) each employee, and — (\$ —) policy limit. [Intentionally Deleted]~~

~~§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than — (\$ —) per claim and — (\$ —) in the aggregate. See Owner's Insurance Requirements, Exhibit A.~~

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

**PAGE 7**

~~§ 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. Basic Services shall also include a review of the existing site to become fully knowledgeable of the existing conditions; a review and analysis of the Owner's budget for the Project; preliminary design study; site planning and design; civil engineering; architectural interior design; space planning for furnishings and equipment; planning and design for access control, CCTV, and burglar alarm. Services not set forth in this Article 3 are Supplemental or Additional Services.~~

...

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall ~~submit, for the Owner and the Scheduling Consultant's approval, submit to the Owner,~~ a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, ~~as well as the 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 ~~anticipated dates when cost estimates or design reviews may occur,~~ and 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 and Scheduling Consultant, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the ~~Scheduling Consultant~~ Owner and participate in developing and revising the Project schedule as it relates to the Architect's services.

#### PAGE 8

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

§ 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.~~ Work, and consistent with the Owner's sustainability goals and initiatives to be defined by the Owner and with consultation with the Architect during the planning and design phases.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the ~~Owner and the Cost Consultant.~~ Owner. The Architect shall meet with the ~~Cost Consultant~~ Owner to review the Schematic Design Documents.

§ 3.2.7 Upon receipt of the Cost Consultant's cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

...

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the ~~Owner and the Cost Consultant.~~ Owner. The Architect shall meet with the ~~Cost Consultant~~ Owner to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents. [Intentionally Deleted]

#### PAGE 9

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and ~~preparation~~ preparation, if necessary, 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 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the ~~Owner and the Cost Consultant.~~ Owner. The Architect shall meet with the ~~Cost Consultant~~ Owner to review the Construction Documents.

§ 3.4.5 Upon receipt of the Cost Consultant's ~~estimate at the conclusion of~~ cost estimate during the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's approval of the Construction Documents.

...

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 or reviewing contracts for construction,~~ but the Architect will not be providing legal advice to the Owner.

...

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project ~~by~~ by, if necessary:

...

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

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§ 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.~~ Architect shall consult with the Owner on matters of aesthetic effect but the Owner shall have the final decision on such matters.

...

§ 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 materials and labor for which the Contractor is requesting payment have been incorporated into the Project or suitably stored as allowed by the Contractor's agreement with the Owner, 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.

PAGE 11

§ 3.6.3.4 The Architect agrees to coordinate with the Owner and Contractor on a schedule for the review of the Contractor's Applications for Payment and agrees to take such action on the Application for Payments with promptness so as not to cause delay in the Owner's ability to issue prompt payment to the Contractor as required by the Agreement between the Owner and Contractor.

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**§ 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. Whenever possible without causing a delay to the construction of the Work, the Architect shall advise the Owner on all such changes in the Work being authorized or contemplated to be authorized.

- ...
- 4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents. Documents, and to the Architect's knowledge and belief, all labor and materials for which the Contractor is requesting final payment have been incorporated into the Project.
- ...

§ 4.1.1.1	Programming	<del>Intentionally Deleted</del>	
§ 4.1.1.2		<del>Intentionally Deleted</del>	
§ 4.1.1.2	Multiple preliminary designs		

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§ 4.1.1.5		<del>Intentionally Deleted</del>	
§ 4.1.1.5	Site evaluation and planning		

...

§ 4.1.1.8	Civil engineering	<del>Intentionally Deleted</del>	
§ 4.1.1.9	Landscape design	<del>Intentionally Deleted</del>	
§ 4.1.1.10		<del>Intentionally Deleted</del>	
§ 4.1.1.10	Architectural interior design		

...

§ 4.1.1.16	As-constructed record drawings		<u>Architect</u>
------------	--------------------------------	--	------------------

...

§ 4.1.1.21	Telecommunications/data design	<del>Intentionally Deleted</del>	
§ 4.1.1.22		<del>Intentionally Deleted</del>	
§ 4.1.1.22	Security evaluation and planning		

...

§ 4.1.1.26	Furniture, furnishings, and equipment design		<u>Architect</u>
------------	--	--	------------------

...

§ 4.1.1.29	Site Surveying		<u>Owner</u>
------------	----------------	--	--------------

...

As-constructed record drawings (4.1.1.16) will be provided by the Architect as a Supplemental Service. Because these record drawings will be based on unverified information provided by the Contractor and others, upon which the Architect is entitled to rely, the Architect will not be able to seal the record drawings or assure their accuracy.

Furniture, furnishings, and equipment design and specification (4.1.1.26) will be provided by the Architect as a Supplemental Service.

**PAGE 14**

Site Surveying (4.1.1.29) will be provided by the Owner.

...

- 5 ~~Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients; [Intentionally Deleted]~~
- ...

- 7 ~~Preparation for, and attendance at, a public presentation, meeting or hearing; [Intentionally Deleted]~~
- ...

- 1 ~~Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect; [Intentionally Deleted]~~
- 2 Responding to the Contractor's excessive 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; or
- 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; [Intentionally Deleted]~~
- 4 Evaluating an extensive number of Claims as the Initial Decision ~~Maker; or, Maker.~~
- 5 ~~Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom. [Intentionally Deleted]~~

**PAGE 15**

- 1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- 2 Five ( 5 ) visits to the site by the Architect during construction
- 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.
- ...

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

...

**§ 5.2** The Owner shall ~~furnish the services of a Scheduling Consultant that shall be responsible for creating the overall Project schedule.~~ The Owner shall adjust the Project schedule, if necessary, as the Project proceeds.

§ 5.3 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. ~~The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work.~~ 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.

§ 5.4 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. The authority of the Owner's Representative to make decisions on behalf of the Owner shall be limited to those decisions customarily allowed in the capacity of the representative's position. Certain decisions of the Owner may require approval by other staff, commissions, or the governing body of the City of Olathe. The Owner's Representative shall not be required to make decisions on matters which the representative is not authorized to make.

§ 5.5 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 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 as may be available any site investigations and written legal description that may be beneficial to the Architect in understanding the existing conditions of the Project site.

§ 5.6 The Owner shall 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. The Architect and Owner agree to cooperate in defining the specific requirements and limits of geotechnical testing of subsurface conditions.

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§ 5.11 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. However, in no event shall any Owner-related legal, accounting, insurance, and or audit services be provided on behalf of the Consultant providing such services to the Owner, nor shall Consultant serve and other role than as an independent contractor of the Owner.

§ 5.13 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. The Owner shall be entitled to communicate directly with the Contractor and any Contractor or Consultant with whom the Owner has a direct contract without having to do so through the Architect. The Owner shall endeavor to include the Architect in such communication when the Owner, in its sole discretion, deems that communication necessary.

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§ 6.3 The Owner shall require the Cost Consultant ~~Consultant's estimates~~ to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's

inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the ~~Cost Consultant,~~ Owner, 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.

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§ 8.1.3 ~~The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.~~ For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.

8.1.3.1 Indemnification and Hold Harmless: For purposes of this Agreement, Architect agrees to indemnify and hold harmless Owner from any and all Loss to the extent Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of Architect or its subcontractors.

8.1.3.2 Comparative Fault & Contributory Negligence: It is agreed as a specific element of consideration of this Agreement that this indemnity will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of Owner or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of Owner's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that Architect's obligation hereunder will not include amounts attributable to the fault or negligence of Owner or any Third Party for whom Architect is not responsible.

8.1.3.3 Damage Limitations: In the case of any claims against Owner indemnified under this Agreement, by Architect or its subcontractors, the indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for Architect or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

8.1.3.4 Negligence by the Owner: Architect is not required hereunder to indemnify and hold the Owner or its agents harmless from liability based on Owner's negligence.

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§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement which cannot be resolved by direct negotiations between the Parties shall be subject to mediation as a condition precedent to binding dispute resolution. ~~the institution of legal or equitable proceedings by either party. 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.~~ mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by 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. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Any dispute under this Agreement not resolved by mediation shall be litigated in the District Court of Johnson County, Kansas, or the closest Court of competent jurisdiction thereto.

...

[ ☒ ] Litigation in a court of competent jurisdiction

...

### **§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### **§ 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** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

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

**§ 9.1** If the Owner fails to make payments to the Architect in accordance with this Agreement, the Architect shall provide written notice to the Owner of non-payment and if payment is not received by the Architect within seven (7) business days thereafter, then such failure shall be considered as 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.

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**§ 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:~~

**§ 9.7** [Intentionally Deleted]

...

**§ 10.1** This Agreement shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 8.3 construed and enforced in accordance with the laws of the State of Kansas.

**§ 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 as amended by the Owner. If Owner amends AIA Document A201-2007, Owner will provide a copy of the amended document to the Architect.

**§ 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.~~ other party.

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**§ 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~~ When appropriate and at the Owner's sole discretion. Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential unless withholding such information would violate the law (including but not limited to the Kansas Open Records Act), create the risk of significant harm to the public, or prevent the Owner or Architect from establishing a claim or defense in an adjudicatory proceeding, and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

2 ~~Percentage Basis~~  
~~(Insert percentage value)~~

~~( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

3 ~~Other~~  
~~(Describe the method of compensation)~~

**\$162,700**

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, 4.1.1, the Owner shall compensate the Architect as follows:

Included in stipulated sum above

See Exhibit B for Hourly Rate Schedule

§ 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 TBD percent ( TBD %), or as follows:

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See Exhibit B for Hourly Rate Schedule

Schematic Design Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Design Development Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase	<u>Thirty Five</u>	percent (	<u>35</u>	%)
Procurement Phase	<u>Five</u>	percent (	<u>5</u>	%)
Construction Phase	<u>Twenty</u>	percent (	<u>20</u>	%)
Total Basic Compensation	<del>one hundred</del> <u>One Hundred</u>	percent (	100	%)

See Hourly Rate Schedule, Exhibit B

**Employee or Category**

**Rate (\$0.00)**

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**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent ( )~~ of the expenses incurred ~~consultants~~. A budget for Reimbursable Expenses is included in the Stipulated Sum in Section 11.1.1.

**§ 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.)*

[Intentionally Deleted]

...

**§ 11.10.1 Initial Payments** [Intentionally Deleted]

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

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

**§ 11.10.2.1** 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 ( ) invoice, provided the invoices for the Architect's services when submitted are found to be acceptable by the Owner. Within five (5) business days the Owner shall notify the Architect of any concerns with the Architect's invoice which may need to be corrected prior to the Owner making payment. Amounts unpaid thirty-one (31) 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.~~

...

~~%—One and one-half percent (1.50%) (or the maximum allowable by law, whichever is lower) of the past due amount per month (18% annual interest rate) from the invoice date.~~

**§ 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 mediation or litigation 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 submitted to the Owner at the time of submitting all applicable invoices.

**§ 11.10.5** In the event Owner becomes credibly informed that any representations of Architect provided in its monthly invoices are wholly or partially inaccurate, Owner may withhold payment of sums then or in the future otherwise due to Architect until the inaccuracy and the cause thereof, is corrected to the Owner's reasonable satisfaction. In the event Owner questions some element of an invoice, that fact shall be made known to the Architect within five (5) business days after receipt of the invoice by the Owner. Architect will help to effect resolution and transmit a revised invoice, if necessary. Amounts not questioned by the Owner shall be paid to the Architect in accordance with terms of this Agreement.

...

## 1 LICENSING REQUIREMENTS

The Architect must be authorized to do business in the State of Kansas. If the Architect is a corporation organized outside the State of Kansas it shall review its authorization with the State of Kansas and if necessary, file the required documentation with the State of Kansas in order to receive authorization to do business in the State of Kansas. The Architect, if organized outside the State of Kansas, must furnish evidence to the Owner of their authority to do business in the State of Kansas. Such evidence must be furnished to the Owner prior to any Contract award.

The Architect and all sub-contractors performing design and construction work on this project shall meet all licensing requirements of the City of Olathe for the work which they intend to perform.

## **2 AFFIRMATIVE ACTION / OTHER LAWS**

During the performance of this Agreement, the Architect agrees that:

- a. Architect shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) 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 age;
- b. 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 commission;
- c. if the Architect fails to comply with the manner in which the Architect 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 canceled, terminated or suspended, in whole or in part, by the City without penalty;
- d. 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 canceled, terminated or suspended, in whole or in part, by the contracting agency; and
- e. the Architect shall include the provisions of subsections (a) through (d) in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this section shall not apply to a contract entered into by the City with Architect if:

- a. Architect employs fewer than four employees during the term of such contract; or
- b. Architect's contract with the City total \$10,000 or less in aggregate.

The Architect further agrees and acknowledges that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

## **3 NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

## **4 INDEPENDENT CONTRACTOR**

The Architect is an independent contractor and as such is not an agent or employee of the City.

## **5 COVENANT AGAINST CONTINGENT FEES**

Architect warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or

resulting from the award or making of this Agreement. For breach or violation of this warranty, City may terminate this Agreement without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**.6 COMPLIANCE WITH LAWS**

Architect shall abide by all applicable federal, state and local laws, ordinances and regulations applicable to the Work or the Project at the time Services are rendered, including but not limited to The Kansas Fairness in Public Construction Contract Act, K.S.A. 16-1901 et seq. Architect shall secure all occupational and professional licenses and permits from public and private sources necessary for the fulfillment of his/her obligations under this Agreement.

**.7 TITLES, SUBHEADS AND CAPITALIZATION**

Title and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of this Agreement. Some terms are capitalized throughout this Agreement but the use of or failure to use capitals shall have no legal bearing on the interpretation of such terms.

**.8 SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for whatever reason, such provision(s) shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

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.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

.2 [Intentionally Deleted]

(Insert the date of the E203-2013 incorporated into this agreement.)

...

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

Exhibit A – City of Olathe, Kansas Insurance Requirements

Exhibit B – Hourly Billing Rate Schedule

Exhibit C – Letter Proposal from Finkle + Williams to City of Olathe date January 9, 2019

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OWNER (Signature)

ARCHITECT (Signature)

(Printed name and title)

**OWNER**

(Printed name, title, and license number, if required)

**ARCHITECT**

(Signature)

(Signature)

(Printed name)

(Printed name)

(Title)

(Title)

**ATTEST**

(City Clerk)

(Seal)

**APPROVED AS TO FORM**

(City Attorney / Deputy City Attorney / Assistant City Attorney)

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

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:08:02 ET on 01/11/2019 under Order No. 1170691036 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B103™ – 2017, Standard Form of Agreement Between Owner and Architect for a Complex Project, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Dated)