

Introduced by: City Manager Nathan Mai-Lombardo

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CHIODINI ARCHITECTS TO DESIGN TWO CITY FACILITIES ACCORDING TO RFP #920**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

- Section 1.** The City Manager is hereby authorized to enter into and execute agreements with Chiodini Architects for the design of two facilities (Fire House #2 Expansion and Public Works) accordance to RFP #920.
- Section 2.** The agreements will be attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its passage.

1st Reading this \_\_\_\_\_ day of \_\_\_\_\_ 2023  
2nd Reading this \_\_\_\_\_ day of \_\_\_\_\_ 2023  
3rd Reading, PASSED and APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_ 2023

\_\_\_\_\_  
Babatunde Deinbo, Mayor

ATTEST:

\_\_\_\_\_  
Deanna L. Jones, City Clerk

\_\_\_\_\_  
Approved as to Form:  
Donnell Smith, City Attorney

|                                       |     |     |        |
|---------------------------------------|-----|-----|--------|
| Final Roll Call:                      |     |     |        |
| Councilwoman Verges                   | Aye | Nay | Absent |
| Councilwoman Williams                 | Aye | Nay | Absent |
| Councilman Hoskins                    | Aye | Nay | Absent |
| Councilwoman Anthony                  | Aye | Nay | Absent |
| Councilman Hindeleh                   | Aye | Nay | Absent |
| Councilwoman-at-Large Crawford-Graham | Aye | Nay | Absent |
| Mayor Deinbo                          | Aye | Nay | Absent |



## MEMORANDUM

**TO:** Mayor Deinbo and Members of Council

**CC:** Deanna Jones, City Clerk, and Donnel Smith, City Attorney

**FROM:** Nathan Mai-Lombardo, City Manager

**DATE:** March 20, 2023

**RE:** Fire Station #2 Expansion and new Public Works Facility Architect

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Mayor Deinbo and Councilmembers –

One of the most significant new projects we wish to embark on this coming year is a major upgrade of two of our oldest City facilities. One, Fire House #2, has been at over capacity for many years. It is not able to adequately house the needed apparatuses we use, nor does it have adequate living facilities for the staff that are required to live there. Expansion and upgrading of this facility is needed in order to properly serve our residents.

Additionally, our Streets Department building is not only severely undersized for the amount of equipment and activities engaged in by our staff, but the building has fallen into a dilapidated condition. It has long needed replacing.

The City has recently completed an RFP process and received five quality bids. Costs were generally all in line with one another, so the recommendation from staff came down to small differences in the materials submitted. Ultimately, all staff members came the same recommendation independent of each another, which was very encouraging.

We have great confidence in recommending Chiodini Architects as the choice to help the City with design of these two facilities. Their complete bid was distributed in your most recent Council memo. Their proposed contract is attached.

I humbly ask that Council approve this new contract and I will proceed with immediate action to improve our City facilities and services.

Thank you for your consideration on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan", written in a cursive style.

Nathan Mai-Lombardo  
City Manager

# AIA® Document B101® – 2017

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

**AGREEMENT** made as of the     day of     in the year  
*(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 Berkeley, Missouri  
8425 Airport Road  
Berkeley, MO 63134  
314.524.3313

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

Louis G. Chiodini, Inc.  
dba Chiodini Architects  
1401 S. Brentwood Blvd., #575  
Saint Louis, MO 63144

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

Architectural Design & Construction Administration Services for  
New Public Works Building at N. Hanley and 5<sup>th</sup> Street and  
Addition to Berkeley Fire House #2 – 9363 Natural Bridge Rd.

### **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.

The Owner and Architect agree as follows.

This Agreement will be composed of two (2) phases.

### **PHASE 1 PROGRAMMING/CONCEPT DEVELOPMENT**

**Scope Determination - Programming, Concept Design Development, Bond Issue Marketing Materials and Preliminary Cost Estimating services. This phase will be billed at hourly rates.**

### **PHASE 2 IMPLEMENTATION**

**Implementation - Architectural, Civil Engineering, MEP/FP Engineering, and Structural Engineering Construction Document drawings, Construction Administration, and Post Construction Services. The fee for this phase is T.B.D. based upon the determined Scope of Work.**

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**User Notes:**

(1433822518)

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*(Paragraph deleted)*

### 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.)*

Full Program T.B.D. Preliminary Scope as defined in City of Berkeley RFQ 920.

§ 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.)*

New Public Works Building at N. Hanley and 5<sup>th</sup> Street and  
Addition to Berkeley Fire House #2 – 9363 Natural Bridge Rd.

§ 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.)*

T.B.D.

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

.1 Design phase milestone dates, if any:

T.B.D.

.2 Construction commencement date:

T.B.D.

.3 Substantial Completion date or dates:

T.B.D.

.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, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Competitive Bid

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

T.B.D.

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

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

Nathan Mai-Lombardo, City Manager  
City of Berkeley  
8425 Airport Road  
Berkeley, Missouri 63134

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

n/a

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

.1 Geotechnical Engineer:

T.B.D.

.2

*(Paragraphs deleted)*

Other, if any:

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

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

Louis G. Chiodini, AIA – Principal in Charge of Design  
Michael A. Chiodini, AIA – Managing Principal  
Jason Edwards, AIA – Project Manager

**§ 1.1.11** The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

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

.1 Structural Engineer:

Case Engineering  
Stephen Sacco, PE  
796 Merus Ct.  
St. Louis, MO 63026

.2 Mechanical/Electrical/Plumbing Engineer:

Custom Engineering  
Joe Davis, PE  
1552 S. 7<sup>th</sup> Street  
St. Louis, MO 63104

3. Civil Engineer:

Civil Design, Inc. (CDI)  
1552 S. 7<sup>th</sup> St.  
St. Louis, MO 63104

4. Cost Estimator:

T.B.D. ( )

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

T.B.D.

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User Notes:

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

T.B.D.

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

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

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth, 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. Reference attached **Exhibit A; Chiodini Architects – Revit Policy and Protocols.**

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. Except as specifically set forth herein, the Architect shall not have any duties or responsibilities for any other portion of the Project. 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 In providing the services specifically set forth in this Agreement, the Architect shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The Architect makes no warranty, either expressed or implied, as to the professional services rendered under this Agreement.

The Owner and Architect are aware that factors outside the Architect's control may affect the Architect's ability to complete the services to be provided under this Agreement. The Architect will perform these services with reasonable diligence and expediency consistent with sound professional practices.

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

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

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under

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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.

Umbrella Liability with policy limits not less than Four Million Dollars (\$4,000,000) each occurrence and aggregate.

§ 2.5.4 Workers' Compensation with policy limits not less than One Million Dollars (\$1,000,000) combined single limit (each accident).

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

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per claim and Four Million Dollars (\$ 4,000,000 ) in annual aggregate.

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

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

**Exhibit B** – Chiodini Architects Certificate of Insurance, attached, **Exhibit B**

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

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

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

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and by such entities providing utility services. The Architect shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Architect to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Service provisions of this Agreement.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### **PHASE 1 - PROGRAMMING/CONCEPT DEVELOPMENT**

Scope Determination - Programming, Concept Design Development, Bond Issue Marketing Materials and Preliminary Cost Estimating services.

#### **PHASE 2 IMPLEMENTATION**

Implementation - Architectural, Civil Engineering, MEP/FP Engineering, and Structural Engineering Construction Document drawings, Construction Administration, and Post Construction Services.

#### **§ 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 perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

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

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

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

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval.

#### **§ 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

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

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

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and 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 in effect as of the date of this Agreement of governmental authorities having jurisdiction over the Project into the Construction Documents.

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

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

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

#### § 3.5 Procurement Phase Services

##### § 3.5.1 General

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

##### § 3.5.2 Competitive Bidding

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

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

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

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

### § 3.5.3 Negotiated Proposals

§ 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.

Neither Owner nor Architect shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, walkouts, accidents, Government acts, or other events beyond the control of the Owner's or Architect's employees, agents, or consultants.

§ 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

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of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

### **§ 3.6.3 Certificates for Payment to Contractor**

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

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

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

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. The Architect and its Consultants shall have a minimum of 15 working days for review of submittals, upon receipt of submittals and exclusive of any postage or shipping time that may result. Any requested expediting of submittals review, in less than 15 working days, will be treated as an Additional Service per Article 4.2.

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

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Shop Drawings are drawings, diagrams, schedules, and other data specifically prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate a specific portion of the work. No other electronic format (i.e. AutoCAD, etc.) of the Construction Documents other than those in PDF format for the Bid Set will be provided by the Architect or the Architect's Consultants to the Contractor or Subcontractors, manufacturers, or suppliers for use as base sheets for Shop Drawing development.

**§ 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.

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

**§ 3.6.5.3** It is understood that adjustments, changes, or additions may be necessary during construction. A contingency fund should be maintained by the Owner until construction is completed to pay for field changes, adjustments, unforeseen items/conditions, or increased scope of items. All change order amounts requested by the Contractor for Architect or Consultant systems shall be submitted to Architect or Consultant for review prior to being approved by Owner or Contractor. The Architect or Consultants will not approve amounts requested that are above a normal bid amount for the work involved. In no case will costs be assessed to the Architect at the discretion of the Owner or Contractor without prior agreement and approval in writing by the Architect. Architect shall not be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct observations to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

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

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

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

§ 3.6.6.5 Upon request of and scheduling by 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 Supplemental Services listed below are included in Basic Services as required for the Project. The Architect shall provide the listed Supplemental Services as part of Basic Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as part of Basic Services. 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 as part of Basic Services. 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<br>(Architect, Owner, or not provided) |
|--|---|
| § 4.1.1.1 Programming & Concept Development                                    | Architect   |
| § 4.1.1.2 Multiple preliminary designs   | Architect   |
| § 4.1.1.3 Measured drawings  | Architect   |
| § 4.1.1.4 Existing facilities surveys  | Architect   |
| § 4.1.1.5 Site evaluation and planning   | Architect   |
| § 4.1.1.6 Building Information Model management responsibilities               | Architect   |
| § 4.1.1.7 Development of Building Information Models for post construction use | Architect   |
| § 4.1.1.8 Civil engineering  | Architect   |
| § 4.1.1.9 Landscape design   | Architect   |
| § 4.1.1.10 Architectural interior design                                       | Architect   |
| § 4.1.1.11 Value analysis  | n/a   |
| § 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3        | n/a   |
| § 4.1.1.13 On-site project representation                                      | Architect   |
| § 4.1.1.14 Conformed documents for construction                                | Architect   |
| § 4.1.1.15 As-designed record drawings   | Architect   |
| § 4.1.1.16 As-constructed record drawings                                      | Architect   |
| § 4.1.1.17 Post-occupancy evaluation   | Architect   |
| § 4.1.1.18 Facility support services   | Owner   |

| Supplemental Services   | Responsibility<br>(Architect, Owner, or not provided) |
|---|---|
| § 4.1.1.19 Tenant-related services                                | Owner   |
| § 4.1.1.20 Architect's coordination of the Owner's consultants    | Architect   |
| § 4.1.1.21 Telecommunications/data design                         | T.B.D.  |
| § 4.1.1.22 Security evaluation and planning                       | T.B.D.  |
| § 4.1.1.23 Commissioning  | Owner   |
| § 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3 | n/a   |
| § 4.1.1.25 Fast-track design services                             | n/a   |
| § 4.1.1.26 Multiple bid packages                                  | n/a   |
| § 4.1.1.27 Historic preservation                                  | n/a   |
| § 4.1.1.28 Furniture, furnishings, and equipment design           | T.B.D.  |
| § 4.1.1.29 Other services provided by specialty Consultants       |   |
| § 4.1.1.30 Other Supplemental Services                            |   |
|   |   |

#### § 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.)*

n/a

§ 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.)*

n/a

§ 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;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
  - .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
  - .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
  - .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
  - .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
  - .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
  - .9 Evaluation of the qualifications of entities providing bids or proposals;
  - .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
  - .11 Assistance to the Initial Decision Maker, if other than the Architect.
- or
- .12 Expediting the review of Shop Drawings in less than 15 working days.

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

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

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 T.B.D. ( ) visits to the site by the Architect during construction
- .3 One ( 1 ) 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 One ( 1 ) 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 eighteen ( 18 ) 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 to be billed on an hourly basis, per the attached hourly rate sheet.

**§ 4.2.6** If at any time, work on the project is delayed, suspended or stopped at the request of the Owner for over Thirty (30) consecutive days or Sixty (60) days cumulatively over a 6-month period, the Architect's services to review,

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resume, and restart the work shall be compensated as Additional Services to be billed on an hourly basis, per the attached hourly rate sheet. The Architect's fees for the remaining services and the schedule shall also be equitably adjusted.

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

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

**§ 5.4** The Owner shall furnish, at the Owner's expense, all information, requirements, reports, data, surveys, and instructions required by this Agreement. The Architect may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Architect shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Owner and/or the Owner's consultants and contractors.

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.

**§ 5.5** 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.

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

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

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

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

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

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

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

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

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

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

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

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market and the Architect's services to resume, restart, and prepare new estimates of the Cost of the Work shall be compensated as Additional Services to be billed on an hourly basis, per the attached hourly rate sheet.

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

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

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

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

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 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 all of their respective Instruments of Service; including the Drawings and Specifications, sketches, renderings – hand drawn and electronic, graphics, photography, calculations, spreadsheets, etc., 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.

In the event the Owner, the Owner's contractors or subcontractors, or anyone for whom the Owner is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents, including electronic files, prepared by the Architect without obtaining the Architect's prior written consent, the Owner shall assume full responsibility for the results of such changes. Therefore, the Owner agrees to waive any claim against the Architect and to release the Architect from any liability arising directly or indirectly from such changes.

**§ 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.

The Owner shall not reuse or make any modification to the construction documents without the prior written authorization of the Architect. The Owner agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the construction documents by the Owner or any person or entity that acquires or obtains the construction documents from or through the Owner without the written authorization of the Architect.

**§ 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.

In recognition of the relative risks and benefits of the Project to both the Owner and the Architect, the risks have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and Architect's officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$ n/a, or the Architect's total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

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

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Architect, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American

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Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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

*(Check the appropriate box.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

*(Paragraphs deleted)*

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days, 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.

§ 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:

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User Notes:

(1433822518)

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

**.1 Termination Fee:**

n/a

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

n/a

**§ 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 governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. If any term, condition or provision of this Agreement is found unenforceable by a court of law or equity, this Agreement shall be construed as though that term, condition or provision did not exist, and its unenforceability shall have no effect whatsoever on the remainder of this Agreement. Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

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

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall transfer, sublet, or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due without the prior 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. Subcontracting to subconsultants, normally contemplated by the Architect as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

**§ 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.

The Architect shall not be required to sign any documents, no matter by whom requested, that would result in the Architect's having to certify, guarantee or warrant the existence of conditions whose existence the Architect cannot ascertain. The Owner also agrees not to make resolution of any dispute with the Architect or payment of any amount due to the Architect in any way contingent upon the Architect's signing any such certification.

**§ 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.

The Architect agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Owner, its officers, directors and employees (collectively, Owner) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Architect's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Architect is legally liable. The Owner agrees, to

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the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, directors, employees and subconsultants (collectively, Architect) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Owner's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Owner is legally liable.

**§ 10.6** Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Owner agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Architect, its officers, partners, employees and subconsultants (collectively, Architect) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability, regulatory or any other cause of action, except for the sole negligence or willful misconduct of the Architect.

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

As copyright and license holder of Architects' instruments of service, project signs displayed at the construction site shall include "Chiodini Architects' as Architect, with address, phone number, and website. Articles and Images for publication regarding the project shall acknowledge Chiodini Architects as the Architect.

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

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

**§ 10.9** Owner or any agent of the Owner will not, either directly or indirectly, for their own benefit or for the benefit of any other person or entity, solicit, hire, or contract with any Chiodini Architects' employee during the term of this Agreement and for twelve (12) months following termination of this Agreement (hereafter the "Nonsolicitation Term"). In the event that Owner or any agent of the Owner desires to solicit, hire, or contract with any employee of the Architect during the Nonsolicitation Term, Owner or Owner's agent must first seek Architect's prior written consent to directly solicit, hire or contract with the employee and to communicate with Architect's employee about the employment opportunity. Architect's consent may be withheld, conditioned or delayed in Architect's sole discretion. In the event that Architect consents to the solicitation, hiring or contracting with an employee of the Architect, and the employee of the Architect accepts an offer of employment from Owner or Owner's agent, the Parties shall discuss issues related to the employee's transition to Owner. The employee's start date will be mutually agreed upon by Owner and Architect in writing. Consent for any one employee shall not be deemed to be consent for purposes of any other employee. The Architect has spent substantial sums in the hiring and training of its workforce and breach by the Owner of the terms of the Non Solicitation provisions will cause the Architect significant harm in amounts that are hard to determine and therefore if Owner solicits, hires or contracts with an employee of the Architect without first obtaining the prior written consent of Architect, Owner shall pay Architect liquidated damages in an amount equal to 20% of the employee's salary with Architect for one year. The provisions of this Section 10.9 shall survive termination of this Agreement for the Nonsolicitation Term.

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§ 10.10 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)

.2 Percentage Basis  
(Insert percentage value)

Phase 2 – to be billed at nine percent of construction cost ( 9 ) % of the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other  
(Describe the method of compensation)

Phase 1 – to be billed at current hourly rates

To be billed monthly on a percentage of completion basis, plus reimbursable expenses.

§ 11.2 For the Architect's Supplemental Services not designated as the Architect's responsibility in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect  
(Paragraphs deleted)  
on an hourly basis per Architect's and Architects' Consultants' current fiscal year Standard Hourly Rate Schedule in effect at the time/date of professional services performed. These schedules are updated annually on January 1<sup>st</sup> and are available upon request.

§ 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  
(Paragraphs deleted)  
on an hourly basis per Architect's and Architects' Consultants' current fiscal year Standard Hourly Rate Schedule in effect at the time/date of professional services performed. These schedules are updated annually on January 1<sup>st</sup> and are available upon request.

§ 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  
(Paragraphs deleted)  
Ten percent ( 10 %), or as follows:

§ 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       | Thirty Five | percent ( | 30 | %) |
| Construction Documents Phase   | Thirty Five | percent ( | 35 | %) |
| Procurement/Construction Phase | Ten         | percent ( | 10 | %) |



(Row deleted)

|                          |                              |
|--------------------------|------------------------------|
| Total Basic Compensation | One Hundred percent ( 100 %) |
|--------------------------|------------------------------|

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by (1) the Owner's most recent estimate for the Cost of the Work or (2) the lowest bona fide bid or negotiated proposal for the Project. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to 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.)*

#### Exhibit C - 2023 Hourly Rates

| Employee or Category | Rate (\$0.00) |
|----------------------|---------------|
|----------------------|---------------|

#### § 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 (mileage, car rental, fuel, etc.) related to the Project (meetings, site visits, etc.) 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 plus Ten percent ( 10 %) of the expenses incurred.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

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## **§ 11.10 Payments to the Architect**

### **§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of n/a ( \$ ) 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 n/a ( \$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

### **§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payment of any invoice indicates Owner's acceptance of this Agreement, and satisfaction with the Architects and Architects' Consultants' services. Payment of invoices is due, as outlined in this Agreement, regardless of suspension or termination of this Agreement by either party. The Architect shall submit invoices for Services and Reimbursable Expenses. The Owner shall review such invoices and, if they are considered incorrect, the Owner shall, within ten days from date of invoice, address issue(s) in writing with the Architect; otherwise, payments are due and payable within 30 days of the Architect's invoice date. Amounts unpaid Thirty ( 30 ) days after the invoice date shall bear interest at the rate entered below.

*(Insert rate of monthly or annual interest agreed upon.)*

1.5% % per month, (18% per annum) or the maximum rate allowed by law; plus all costs and expenses incurred by the Architect or Architect's Consultants (including attorney fees) associated with the collection of delinquent payments.

In the event any portion of an account remains unpaid 120 days after the billing, the Architect may institute collection action and the Owner shall pay all costs and expenses associated with said collection, including reasonable attorney's fees.

**§ 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 in writing or has been found liable for the amounts in a binding dispute resolution proceeding.

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

## **ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

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

## **ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

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

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

**.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; Chiodini Architects Revit Policy and Protocols

Exhibit B; Chiodini Architects 2023 Certificate of Insurance

Exhibit C; Chiodini Architects and Consultants 2023 Hourly Rates

**.4 Other documents:**

*(List other documents, if any, forming part of the Agreement.)*

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

  
\_\_\_\_\_  
**ARCHITECT** *(Signature)*

Louis G. Chiodini, AIA Principal

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

## Exhibit A

### Chiodini Architects Consultant Revit Policy

Chiodini Architects (Chiodini) has developed a methodology for successfully working collaboratively within the Revit environment which is to be **strictly adhered to** by all consulting team members. AutoCAD is a drafting program; whereas, Revit is building information modeling software for architects and engineers. For Chiodini and our consulting team to be efficient, Chiodini has developed the following requirements for file development and exchange between Chiodini and consulting team members:

1. A Revit model will be issued by Chiodini to consulting team members for use by respective disciplines. This Revit model is to be linked to each disciplines' respective Revit model.
2. A structural model containing Revit structural elements is to be prepared and provided by the structural engineering consultant for full coordination. This structural Revit model is to be prepared and maintained separately from the Architectural and other Consultant Revit models.
3. A separate Mechanical, Electrical, Plumbing, Fire Protection, etc. model containing respective Revit Consultant elements must also be prepared and provided by respective consultant(s) for full coordination. Respective Consultant discipline Revit models are to be prepared and maintained separately from the Architectural and other consulting team member Revit models.
4. All Consultant Revit models must be set-up and use "Worksets" in their respective Revit models. Consultants shall provide a list of "Worksets" and respective content for review and coordination by the Chiodini project manager.
5. Implementing or using "Worksets" improperly may result in substantial rework of respective Architectural/Consultant Revit models, requiring additional production and coordination time.
6. Blank or unused views and sheets are to be purged prior to exporting Revit models to Chiodini.
7. All grids and levels are to be properly indicated on the correct "Workset" "Shared Grids and Levels". Consultants are to copy monitor respective discipline grids and levels and are not to place respective discipline grids and levels within their respective Revit models.
8. Chiodini uses "Origin to Origin" for all coordinate based file linking.
9. Do not place reference plans for ceilings within respective Revit models. All ceiling objects must be connected to the appropriate ceiling system noted in the Architectural Revit Model.
10. Chiodini requires a Consultant's model to have a minimum LOD (level of design) of 300. This LOD requirement may be increased at the inception of the project solely at the discretion of the Chiodini Project Manager. Below is a graphic depicting the LOD's. Figure 1 is a structural example and Figure 2 is a MEP example. (Image credit for Figure 1 and 2 Image by BIM Forum)



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|  |  |        |
|--|--|--------|
| PRODUCER<br>Charles L. Crane Agency Co.<br>100 N Broadway, Ste 900<br>Saint Louis, MO 63102    | CONTACT NAME: Julie Knight   |        |
|  | PHONE (A/C, No, Ext): (314) 444-4817 FAX (A/C, No): (314) 444-4970 |        |
|  | E-MAIL ADDRESS: jknight@craneagency.com                            |        |
|  | INSURER(S) AFFORDING COVERAGE                                      | NAIC # |
|  | INSURER A : Travelers Indemnity Co.                                | 25658  |
| INSURED<br><br>Chiodini Associates<br>1401 South Brentwood, Suite 575<br>Saint Louis, MO 63144 | INSURER B : Travelers Prop Cas Co of Amer                          | 25674  |
|  | INSURER C : Travelers Casualty & Surety                            | 19038  |
|  | INSURER D : XL Specialty Insurance Company                         | 37885  |
|  | INSURER E :  |        |
|  | INSURER F :  |        |

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE  | ADDL INSD | SUBR WVD | POLICY NUMBER   | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS   |
|----------|--|-----------|----------|-----------------|-------------------------|-------------------------|--|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: |           |          | 6805H4714262247 | 5/1/2022                | 5/1/2023                | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000<br>MED EXP (Any one person) \$ 5,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
| B        | <input checked="" type="checkbox"/> AUTOMOBILE LIABILITY<br><input checked="" type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY                          |           |          | BA7R1699202247G | 5/1/2022                | 5/1/2023                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$  |
| B        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br>DED <input type="checkbox"/> RETENTION \$  |           |          | CUP7872Y6892247 | 5/1/2022                | 5/1/2023                | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000   |
| C        | <input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N<br>If yes, describe under DESCRIPTION OF OPERATIONS below   |           | N / A    | UB4K7689822247G | 5/1/2022                | 5/1/2023                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                  |
| D        | Professional   |           |          | DPR5006864      | 12/31/2022              | 12/31/2023              | Each Claim 2,000,000   |
| D        | Liability  |           |          | DPR5006864      | 12/31/2022              | 12/31/2023              | Annual Aggregate 4,000,000   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Project: 8425 Airport Road, Berkley, MO 63134

## CERTIFICATE HOLDER

## CANCELLATION

|  |  |
|--|--|
| The City of Berkley<br>6140 N. Hanley Road<br>Berkeley, MO 63134 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. |
|  | AUTHORIZED REPRESENTATIVE<br><br>Joel Karsten  |



## Exhibit C

### 2023 BILLING RATE TABLE

|                             |       |
|-----------------------------|-------|
| Principal/Managing Partner  | \$275 |
| Sr. Project Director        | \$250 |
| Director of Design          | \$250 |
| Sr. Project Manager         | \$225 |
| Director of Interior Design | \$205 |
| Director of Graphic Design  | \$195 |
| Project Manager             | \$195 |
| Sr. Project Architect       | \$150 |
| Project Architect           | \$130 |
| Associate Architect         | \$110 |
| Administration              | \$ 95 |

Effective January 1, 2023 through December 31, 2023; subject to a minimum 5% increase at beginning of subsequent calendar year.



**CUSTOM ENGINEERING**  
MECHANICAL & ELECTRICAL ENGINEERING

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**Hourly Rates  
2022-2023**

|                                |          |
|--------------------------------|----------|
| Principal                      | \$236.00 |
| Project Manager                | \$231.00 |
| Sr Elect                       | \$205.00 |
| Elect III                      | \$166.00 |
| Elect II                       | \$155.00 |
| Elect I                        | \$150.00 |
| Sr. Mech                       | \$205.00 |
| Mech III                       | \$166.00 |
| Mech II                        | \$155.00 |
| Mech I                         | \$150.00 |
| Cadd/BIM                       | \$139.00 |
| Proj Assist                    | \$105.00 |
| Commissioning Technician (CxT) | \$160.00 |
| Commissioning Agent (CxA)      | \$215.00 |

## Reimbursable Expense Schedule

### **REIMBURSABLE EXPENSES**

For reimbursable expenses, including out-of-town travel and living expenses, drawing reproductions, computer hardware and software utilization, long distance phone charges, film and photographic processing costs, postage and express mailing, courier service or handling charges, and other directly attributable to the project, the fixed multiple of **1.1** times the actual cost to us, will be charged.

|             |             |                      |                  |
|-------------|-------------|----------------------|------------------|
| Plots       |             |                      |                  |
| 11 x 17     | B&W         | \$4/sheet            |                  |
| 22 x 34     |             | \$8/sheet            |                  |
| 24 x 36     | B&W         | \$8/sheet            |                  |
| Copies      | \$0.35/copy | Digital Color Prints | \$1.20/ 8.5 x 11 |
| Computer CD | \$25        | Mileage              | \$0.625/mile     |

The mileage and meals reimbursement rates will reflect current guidance issued by federal agencies



January 12, 2023

**Subject: 2023 Engineering Billing Rates**

|                    |          |
|--------------------|----------|
| Principal          | \$250/hr |
| Department Manager | \$230/hr |
| Senior Engineer    | \$210/hr |
| Engineer           | \$200/hr |
| Project Manager    | \$210/hr |
| Senior Designer    | \$190/hr |
| Designer/Drafter   | \$160/hr |
| Clerical           | \$85/hr  |

## 2023 STANDARD HOURLY RATE SCHEDULE

|  |            |
|--|------------|
| Principal                              | \$ 230     |
| Project Manager II                     | \$ 205     |
| Project Manager I                      | \$ 180     |
| Project Engineer III                   | \$ 160     |
| Project Engineer II                    | \$ 135     |
| Project Engineer I                     | \$ 100     |
| Designer II                            | \$ 110     |
| Designer I                             | \$ 75      |
| GIS Technician                         | \$ 85      |
| Professional Land Surveyor II          | \$ 200     |
| Professional Land Surveyor I           | \$ 125     |
| Surveyor II                            | \$ 100     |
| Surveyor I / GIS Field Tech            | \$ 75      |
| 2-Person Survey Crew                   | \$ 175     |
| 3-Person Survey Crew                   | \$ 210     |
| Clerical                               | \$ 85      |
| Intern                                 | \$ 50      |
| <b>Miscellaneous (all disciplines)</b> |            |
| Overtime Requested by Client           | Negotiated |
| Reimbursable Expenses                  | Cost +     |
| 10%                                    |            |

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Work will be billed at Civil Design, Inc.'s option either upon completion of services or on a monthly basis. Invoices are payable based on the payment terms defined in the contract.

Rates are in effect as of January 1, 2023 but may be superseded by a new schedule at Civil Design's discretion.