

**Request for Qualifications
Architectural Design and Engineering Design Services**

**St. Louis County Economic Council
Lemay Community Center**

**Qualifications Due:
Monday November 30, 2010 by 3:00 p.m.
St. Louis County Economic Council
121 S. Meramec, Suite 900
Clayton, Missouri 63105
(314) 615-7663
Attn: Beth Letscher**

Request for Qualifications Architectural & Engineering Design Services

The St. Louis County Economic Council (CEC) is requesting qualifications for professional architecture and engineering services to complete the design development drawings, construction, and bid documents for a new LEED-certified community center. This facility will be located on approximately 6-acres at the intersection of South Broadway and Kingston (at the northern end of Jefferson Barracks County Park) in the unincorporated St. Louis County community of Lemay.

Interested firms should submit five (5) written copies plus one electronic file of their Statement of Qualifications to the CEC, 121 South Meramec, Suite 900, Clayton, MO 63105 Attn: Beth Letscher by 3 p.m. on Monday November 30, 2010. For further information, please call Beth at 314-615-7669. The St. Louis County Economic Council reserves the right to reject any or all submittals received or any portions thereof, to waive informalities in the proposals and to negotiate with proponents if and when, in the Economic Council's discretion, the Economic Council deems that to be in its best interest. The CEC is an Equal Opportunity Employer.

Originator: Beth Letscher
St. Louis County Economic Council
121 S. Meramec, Suite 900
Clayton, Missouri 63105

ARCHITECTURAL & ENGINEERING SCOPE OF SERVICES

Introduction

St. Louis County desires to further its long term investment in the Lemay community by developing a new community center. The St. Louis County Economic Council (CEC) is requesting qualifications for professional architecture and engineering services for a new LEED-certified community center to be located on approximately 6-acres at the northern end of Jefferson Barracks County Park at the intersection of South Broadway and Kingston in the unincorporated St. Louis County community of Lemay. The services contemplated will be included within a professional services contract to be awarded.

Project Description

The Lemay Community Center is anticipated to be an indoor community center building with outdoor aquatic features. The community center building will likely feature a gymnasium, plus a running/walking track, a weight/cardio room, a aerobic/dance room, community meeting room(s) and support spaces. The aquatic features will include a recreational “fun” pool and lane pool for laps and swim lessons.

The proposed location for the facility is at the northern end of Jefferson Barracks Park. Jefferson Barracks Park is located in the historic Jefferson Barracks complex which includes Sylvan Springs Park, Jefferson Barracks National Guard Base, Jefferson Barracks National Cemetery and the VA Medical Center. A portion of this complex is listed on the National Register of Historic Places, and parts of the complex have been home to active military installations since 1826. In addition to being influenced by the natural park setting and the rich military history, the Lemay Community Center will also be located in a visible, prominent location in the community. The firm chosen for this project will be expected to respect the history, natural setting, and prominent location of the facility when contemplating the project’s design. In addition, the proposed site contains karst topography and known sinkholes. The proposed location also has two high pressure gas lines bisecting the site. The selected firm will need to be familiar with working with this topography and within these limitations.

The Lemay Community Facility is being developed by the St. Louis County Economic Council but will be owned and operated by St. Louis County Parks Department. The selected firm will be expected to work closely with both on all site issues, building design and programming issues.

Finally, the selected firm will be expected to design a facility that is eligible for a LEED®-certified Green Building. The firm chosen for this project will need to incorporate environmentally sustainable principles in the building design, as well as provide a cost/benefit analysis for utilizing these elements.

Scope of Work

The general scope of work is as follows:

1. Participate in kick-off meeting with the CEC project team to review the preliminary site analysis data; establish common objectives; and determine the priorities for the project and respective roles and responsibilities. At the conclusion of the meeting the Architect will summarize the data received reflecting the understanding and perspectives of the participants. This information will provide the basis upon which the design development concepts will be developed.
2. Complete predevelopment planning and design tasks. Tasks include, but are not limited to, site surveying, architectural design and development work including preparation of construction documents, bid negotiating, and construction administration; engineering work, including both structural and civil engineering; environmental Phase II assessment; and other associated tasks.
3. Conduct progress meetings with the project team to review and develop design development drawings. The Architect will make the necessary modifications to the selected design, based on input from the team, and on the construction cost estimates.
4. Prepare presentation graphics, a master site plan and perspective renderings to illustrate the concepts and features of the selected design concept.
5. Based on approved plans, prepare complete and bid ready construction documents for the project.
6. Provide the CEC with electronic files and five sets of completed plans and construction specifications for the purpose of obtaining construction bids.
7. Provide traditional construction administration services including monitoring general contractor and subcontractor pay applications.
8. Any other services required by the Form of Architectural Services Agreement attached hereto and discussed below.

Proposal Format

Five copies of the statement of qualifications should be submitted plus one in electronic format (CD or thumb drive). Materials submitted should respond to the following factors:

- A. Demonstrated experience of the firms work on Community Centers or projects of a similar nature
 - Experience in the type and complexity of design required under the proposed contract

B. Qualifications of the key personnel to be assigned to the project, including:

- The education and experience of the members of the project team
- The experience of personnel assigned to perform the services
- Certification and other professional registration requirements
- LEED-accredited Design Certification

C. Qualifications of the sub-consultant services

D. Previous experience of the firm with the Port Authority, CEC or St. Louis County Parks Department.

E. Timeline for completing design services

F. DBE Status/Participation

G. References for other similar design work

The CEC encourages submission of qualifications from minority and women owned firms. The CEC does not discriminate on the basis of race, color, religion, creed, sex, age, ancestry, or national origin in consideration of this award. Equal Opportunity Employer.

Selection

The CEC will utilize a qualifications-based selection process in accordance with its procurement policy and applicable law to select the most highly qualified firm, following which the CEC and the selected firm shall enter into negotiations regarding the compensation to be paid to the selected firm for the scope of services required by this RFQ. Assuming those negotiations are successful, the selected firm will be required enter into an agreement with the CEC using a CEC's standard form of Agreement for Architectural Design Services (the "Contract"), a copy of which is attached hereto and incorporated into this RFP by reference. As a result, each respondent should thoroughly review and familiarize themselves with all provisions and requirements of the Contract. Submission of a proposal in response to this RFP is a firm representation by the respondent that it is prepared to immediately execute the Contract, if and to the extent selected by CEC and upon the successful conclusion of the negotiations regarding compensation referenced above.

Terms and Conditions

1. CEC reserves the right to reject any and all submissions. CEC also reserves the unqualified right to modify, suspend, or terminate at its sole discretion any and all aspects of this RFQ process, to obtain further information from any and all respondents, and to waive any defects as to form or content of the RFQ or any submissions by any firm.
2. This RFQ does not commit the CEC to award a contract, to defray any costs incurred in the preparation of a response to this request, or to procure or contract

for services. All submissions become the property of the CEC as public records. All submissions may be subject to public review, on request, unless exempted as discussed elsewhere in this RFP.

3. By accepting this RFQ and/or submitting qualifications in response thereto, each respondent agrees for itself, its successors and assigns, to hold the CEC and St. Louis County and all of their various agents, commissioners, directors, consultants, attorneys, officers and employees harmless from and against any and all claims and demands of whatever nature or type, which any such proponent, its representatives, agents, contractors, successors or assigns may have against any of them as a result of issuing this RFQ, revising this RFQ, conducting the selection process and subsequent negotiations, making a final recommendation, selecting a proponent or negotiating or executing an agreement incorporating the commitments of the selected proponent.

Summary of Submission Requirements

Five copies of the statement of qualifications must be submitted as directed above to the St. Louis County Economic Council and are due no later than 3:00 p.m. on Monday November 30, 2010. Please direct inquiries related to this RFQ and/or the Contract to Beth Letscher at 314-615-7669 or eletscher@slcec.com.

AGREEMENT BETWEEN OWNER AND ARCHITECT

This Agreement between Owner and Architect ("Agreement") is made and entered into as of the ___ day of July, 2010, by and between the Economic Council of St. Louis County (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Architect") with respect to the provision by Architect of design and engineering services in connection with the construction of a community center to be located at the intersection of South Broadway and Kingston (at the northern end of Jefferson Barracks County Park) in the unincorporated St. Louis County community of Lemay (hereinafter referred to as the "Project").

ARTICLE I GENERAL SERVICES

1.01 Architect's Services. The Architect's "Services" shall consist of, and pursuant to this Agreement the Architect agrees to provide, those services for the Project required by the terms and conditions hereof, including but not limited to designing the Work, and providing Construction Phase Services as set forth herein. In this regard, the Architect shall be responsible to design and/or specify (and as used herein the term "Work" shall mean) all work, labor, materials, finishes, systems, equipment and services necessary to construct those amenities, systems, features and other aspects of the Project identified in the Project Program attached hereto as Exhibit A, including, as applicable or necessary to effectuate the Project Program, architectural details, structural elements, heating, air conditioning, ventilation, acoustical, telephone, voice, data and other communications systems, plumbing, security, life safety, electrical, vertical transportation, lighting, food service and related equipment, façade repairs, exterior signage, audiovisual, parking and landscaping. As used herein, the term "Design Documents" shall mean all plans and specifications and all other drawings, designs, models, prints, computations, instructions and other materials prepared by or through the Architect (or any of the Architect's Consultants) specifying, describing or relating to the Work, including but not limited to all Schematic Design Documents, Design Development Documents and Construction Documents. The Architect shall be responsible for the professional quality, technical accuracy and the coordination of all Design Documents and other Services provided by or through the Architect or the Architect's Consultants under this Agreement and for the coordination of the Services performed by the Architect or the Architect's Consultants with services provided by the Owner, Owner's Consultants, Contractor or any other entity retained by the Owner for and necessary to the Project.

1.02 Project Program. The Architect shall design the Work in accordance with the Project Program (including but not limited to any design and construction standards or requirements identified therein), except as the Project Program may be modified by Owner. The Architect acknowledges that the Project Program sets forth desired features in a general fashion only and is not an exhaustive list of all design requirements for the Work. Unless otherwise agreed to by the Owner in writing (or in the Project Program itself) the inclusion of or failure to include any particular item in the Project Program shall not relieve the Architect of the obligation to design the entire Work in a sound, operable, functional and complete fashion, consistent with the standards of professional skill, care and diligence established herein.

1.03 Communication and Coordination. Architect shall conduct all conferences and meetings which are necessary or requested by Owner, and shall promptly prepare minutes thereof, and shall advise and assist Owner in connection with all matters and questions pertaining to the construction of the Work as well as all matters and items referred to herein. Architect will also consult with the contractors and trade contractors retained by the Owner to construct the Work (collectively referred to herein as "Contractor") as to details of construction planning, cost estimating, and the development of cost savings. Architect acknowledges that Owner may retain an interior designer for the Project (the "Interior Designer"), who may prepare concept drawings and related design documents that establish the basic requirements for certain interior finishes, related architectural features and associated furniture, fixtures and equipment for the Project (the "Interior Design Standards") and that the Owner may also retain certain other consultants to assist Owner in connection with the design and construction of the Project, including to provide certain testing, evaluations or other information or services (which entities are collectively referred to herein as the "Owner's Consultants"). With respect to the Interior Designer, Architect agrees to prepare the Design Documents in accordance with the Interior Design Standards as established by the Interior Designer, except as they may be modified by the Owner. (In this regard, Architect acknowledges and agrees that the Interior Design Standards shall not be considered accepted until they are approved directly by Owner and that no changes shall be made to the

Interior Design Standards without the express and direct approval of the Owner, that the Interior Designer is not the Owner's agent for this purpose and that all questions or clarifications regarding the Interior Design Standards shall be directed to and determined by the Owner.) In addition, Architect shall maintain communication and coordinate the Architect's Services with the Interior Designer and the Owner's Consultants as necessary to facilitate the completion of the Design Documents in accordance with the Project Program established pursuant to this Agreement. The Architect acknowledges and agrees that Owner's Consultants are solely advisors and assistants to Owner and that Owner's Consultants shall not have authority to act as Owner's agent or otherwise to act on behalf of Owner in connection with the Project or this Agreement unless so indicated to the Architect in writing by Owner.

1.04 Architect's Consultants. Architect shall select and retain (and shall be responsible for) all engineers or consultants whose services may be deemed necessary or advantageous by Architect in connection with the performance of the Services required of Architect pursuant to this Agreement, including as applicable, electrical, mechanical, civil and structural engineers (all of whom are collectively referred to herein as the "Architect's Consultants"). Architect shall not retain any Architect's Consultant without the approval of Owner; however the approval of Owner to such retention shall not relieve, affect or otherwise modify Architect's obligations under this Agreement, including Architect's responsibility for the technical accuracy, quality and coordination of any Services provided by any of the Architect's Consultants. All costs associated with the Services rendered by all Architect's Consultants shall be deemed included in the Architect's Basic Fee and shall be paid for by Architect.

1.05 Approval of Owner and Peer Review. Architect acknowledges that Owner (either directly or through any of the Owner's Consultants) may review, comment on or give approval of the Services provided or Design Documents prepared by Architect or Architect's Consultants. Among other things, Architect acknowledges that Owner may request any of Owner's Consultants to conduct a full or partial peer review of the Design Documents or other Services provided by Architect pursuant to this Agreement. However, Architect expressly agrees that neither any peer review conducted by Owner's Consultants, nor any review, comment or approval of Owner or Owner's Consultants with respect to any Services or Design Documents provided by or through Architect, nor the discovery of or the failure of Owner or Owner's Consultants to give notice of or to observe, discover or otherwise notice any error, defect, or omission in the Architect Services or any Design Documents shall constitute a waiver or acceptance of such error, defect or omission, nor shall any such circumstance or action affect or reduce the Architect's responsibilities to Owner under this Agreement. Any review, discussion, observation, inspection, approval or comment by Owner or Owner's Consultants with respect to any Design Document or the Architect's Services is in reliance upon, and subject to, the performance by Architect of the Services in accordance with, and pursuant to, the terms of this Agreement and shall not constitute a technical approval or acceptance of (or any assumption of liability or responsibility with respect to) such Design Documents or Services.

1.06 Testing. The Architect, as part of Basic Services, shall identify and recommend in writing to Owner any testing or investigation of the Site (and any existing structures thereon) which is reasonably necessary in the professional opinion of the Architect in connection with the design and construction of the Work, including any reports relating to the soils, structural or other physical conditions at the Site, and the Architect shall review and incorporate the results of any such testing provided to or obtained by Architect, in preparing the Design Documents for the Work. If the design and/or construction of the Work involves connection to, rehabilitation of or coordination with existing structures at the Site, the Architect shall be solely responsible (subject to access being provided by Owner) to survey existing finishes, confirm availability of electrical services, performance of mechanical systems, confirm critical building dimensions and confirm the location of mechanical, electrical and plumbing services, utilities, columns, fixed equipment and other major fixed building elements which are readily ascertainable by reasonable means (without requiring demolition or destructive testing) and are necessary for the proper design of the Work. In this regard, the Architect shall not be entitled to rely on the accuracy of any information contained in as-built drawings furnished by Owner, but shall be responsible for verifying such information.

1.07 Design to Budget. Architect acknowledges that the Owner has established a firm and fixed "Project Budget" for the cost of the Work, (which is attached hereto as Exhibit B) and that it is of primary concern to Owner that the Work be designed and constructed within the Project Budget. The Architect has reviewed and is familiar with the Project Budget and understands that Owner will obtain estimates of the cost of the Work at such times as may be directed by the Owner. In this regard, as requested by any Owner's Consultants retained

to provide such estimate, Architect shall, as part of the Architect's Basic Services, answer questions, provide clarifications and explain the design intent for the documents upon which any estimate is based. If any such estimate or the lowest bona fide bid or negotiated proposal for the Work exceeds the Project Budget, then the Architect, shall, as and when if requested by Owner, provide Owner with an analysis of the situation and specific recommendations for modifying the Design Documents to fit within the Project Budget, and meet with and assist Owner in evaluating the situation and the Architect's analysis. The Owner may then require the Architect to modify the Design Documents, pursuant to Owner's direction, to fit within the Project Budget, and the Architect shall do so without additional compensation and as part of the Architect's Basic Services except and only to the extent the reason that the estimate or bid or negotiated proposal exceeds the Project Budget is any of the following, in which event the Architect shall be entitled to Additional Services compensation, pursuant to the applicable provisions of this Agreement, for those modifications to the Design Documents required to address that portion of the Project Budget overrun that is so caused by the following: (a) changes made by the Owner to any Design Documents previously approved by the Owner pursuant to the applicable provisions of this Agreement; or (b) calculation mistakes or other failures of the estimator accurately or completely to price the design elements and information set forth in or reasonably inferable from the design documents prepared by the Architect and upon which the estimate is based; or (c) market increases in the cost of labor, materials or equipment occurring subsequent to the immediately preceding estimate; or (d) changes made by the Owner to the sequencing or scheduling of construction (except to the extent that such changes are made in response to delays caused by the Architect).

1.08 Requirements. The Design Documents shall comply with all requirements applicable to the design and construction of the Work, including as applicable but not limited to, the Americans with Disabilities Act ("ADA") and the current and applicable physical accessibility requirements set forth in the ADA and the related accessibility guidelines and the Uniform Federal Accessibility Standards as published in the Federal Register and all other requirements, regulations, laws, ordinances, encumbrances, and covenants, and restrictions which affect the design, construction, existence or use of the Work of which a competent, experienced and conscientious architect would or should be normally aware ("Requirements"). However, the Architect shall not be responsible for compliance with changes to Requirements or new Requirements enacted after the design of the Work is complete, and shall be entitled to rely reasonably on interpretations and approvals given in writing by government officials with responsibility for enforcing Requirements. If the Architect believes that a Requirement is ambiguous or unclear in any respect and cannot obtain a written interpretation or decision from the applicable government official responsible for enforcing the Requirements, the Architect shall so notify the Owner, and the Owner shall direct the Architect as to how to proceed. In such event, if the Architect proceeds as directed by the Owner, the Architect shall not be responsible for the correctness of the direction issued by the Owner and Architect shall be entitled to compensation as an Additional Service (pursuant to the applicable provisions of this Agreement) for any modifications to the Design Documents required to change the direction issued by the Owner after it is implemented by the Architect.

1.09 Design/Build Work and Special Engineering Services. In the event any portions of the Work are to be performed by the Contractor on a "design/build" basis (referred to herein as "Design/Build Work"), the Architect shall nonetheless be responsible to prepare parameter or performance specifications and related documents in sufficient detail to identify for the Contractor the essential performance and other characteristics necessary for the Design/Build Work so that the Design/Build Work conforms to the Project Program, is properly coordinated and integrated with the other aspects of the design for the Work and will be sufficient to provide Owner with full, complete and operational systems and equipment in compliance with the Project Program, the Project Budget and all Requirements. In addition, if the Owner separately retains certain Owner's Consultants to provide special engineering and design services for the Project, such as equipment specification and related engineering or similar services, the Architect shall be responsible, as part of the Architect's Basic Services for specifying any necessary criteria for the services to be provided by such Owner's Consultants so that such services are properly and completely incorporated into and integrated with the Design Documents prepared by the Architect. In either event, the Architect shall be responsible to coordinate the design services provided by the Contractor with respect to any Design/Build Work, and to coordinate the services provided by such Owner's Consultants, with the Design Documents provided by the Architect, so that the Design Documents properly account for and accommodate the Design/Build Work and those portions of the design provided by the Owner's Consultants and properly articulate all essential elements of the Work and are otherwise of such detail, technical accuracy and quality as is required to allow the Contractor to construct the Work in compliance with the Project Program and all Requirements.

ARTICLE II ARCHITECT'S SPECIFIC SERVICES

2.01 Schematic Design Phase.

(a) During the Schematic Design Phase, Architect shall review the Project Program with the Owner to ascertain the requirements for the Work, shall evaluate Owner's criteria and general requirements, available data regarding the Site and other relevant information, shall review with Owner alternative approaches for design and construction of the Work, and shall prepare complete Schematic Design Documents for the Work including design drawings, descriptions and data and, as applicable or necessary to effectuate the Project Program, a site plan, a description of shapes, dimensions and locations of buildings, pedestrian circulation, as well as plans, sections, elevations, outline specifications and a general description of the Work.

(b) Architect shall make such changes and revisions in the Schematic Design Documents and provide such drawings, reproductions and supporting data as may reasonably be required or necessary to obtain the approval of Owner. Architect shall, at the request of Owner, consult with appropriate governmental agencies so that the Schematic Design Documents comply with all Requirements and shall prepare such supplementary or clarifying drawings or specifications as are necessary in order to obtain all such governmental approvals or authorizations, and shall, at the request of the Owner, appear as an expert witness, at zoning boards, architectural review boards, planning boards or commissions, or other governmental meetings or hearings.

2.02 Design Development Phase.

(a) The Design Development Phase shall consist of the preparation by Architect from the approved Schematic Design Documents, and any adjustments authorized by Owner in the Project Program or Project Budget, of Design Development Documents for the Work, in sufficient detail to: (i) illustrate and establish accurately the size and character of the Work and its various systems and the essentials characteristic as to the nature and kinds of materials necessary in connection with the Work, and (ii) allow Owner to obtain a detailed estimate of the construction cost for the Work. Architect shall make such revisions in the Design Development Documents as may be required to obtain the approval of Owner. Architect shall prepare explanatory information and documents concerning the Design Development Documents as may be required by any governmental agencies or authorities.

2.03 Construction Documents Phase. The Construction Documents Phase shall consist of the following:

(a) The preparation by Architect in final form satisfactory to Owner, from the approved Design Development Documents, and any further adjustments authorized by Owner in the Project Program or in the Project Budget of final Design Documents consisting of full plans and specifications and related working drawings sufficient to fix and describe for each component of the Work details pertaining and relevant to the requirements for construction of that component and its compatibility and relationship with the other components and aspects of the Work in sufficient detail to allow the Contractor to construct the Work properly and completely and in compliance with all Requirements.

(b) Following approval by Owner of the final Design Documents, Architect shall, at the direction of Owner, assist in applying for and obtaining: (i) approval of the final Design Documents by all applicable governmental agencies; and (ii) all building permits and all other permits from, certifications by, or approvals of governmental agencies or authorities having jurisdiction over the design, construction, existence or use of the Work. Architect shall, at the direction of Owner, process the applications for all such permits, certifications and approvals. To the extent that, in order to obtain such permits, or any other permits which must be obtained by Architect for the Work, revisions must be made to the final Design Documents, Architect shall make such revisions at Architect's cost and expense, unless such revisions are required by the enactment of or revision of Requirements subsequent to the preparation and approval of the final Design Documents, in which event the Architect shall be entitled to Additional Services compensation, pursuant to the applicable provisions of this Agreement, for those revisions required because of the enactment of or a revision to the Requirements subsequent to such preparation and approval.

(c) At Owner's request, Architect shall furnish Owner or any other parties designated by Owner, with an Architect's Certificate addressed to, and in form and substance reasonably satisfactory to the Owner,

certifying, among other matters, that to the best of the Architect's knowledge and belief that the design, existence and use of the Work as set forth in the Design Documents complies fully with all Requirements.

(d) Architect will, to the extent requested by Owner, participate and assist in the analysis and review of all bids and proposals for compliance with the Design Documents and will cooperate with and assist Owner in the negotiation and preparation of contracts with the Contractor for construction of the Work ("Contracts for Construction"). In this regard, Architect acknowledges that the Contracts for Construction shall be in such form and substance as are directed and approved by Owner and will not be comprised of AIA or other industry form documents, but instead will consist of manuscript contract agreements prepared by Owner. Architect further understands and agrees that the Architect is not authorized to, and shall not, draft or incorporate any general conditions or other contract provisions in connection with any specifications or other Contract Documents drafted, issued or prepared by Architect, but instead is to use only the specific Contracts for Construction directed and approved by Owner for the Project. As used herein "Contract Documents" shall mean the Contracts for Construction, including all exhibits thereto and all documents enumerated or referred to therein or prepared in connection therewith.

2.04 Construction Phase.

(a) The Construction Phase will commence with construction of the Work and will terminate on the date of final payment to Contractor. Throughout the Construction Phase, Architect shall be available to the Owner and Contractor to answer questions and provide clarification regarding the interpretation and/or application of the Design Documents prepared by the Architect, to review and take appropriate action on requests for information, shop drawings and other submittals from the Contractor and to resolve issues relating thereto that may arise during the construction of the Work. However, the Architect, the Architect's Consultants and their respective employees and representatives, shall be solely advisors to Owner, and shall not have authority to act on behalf of Owner, except and only to the extent provided in this Agreement, and they shall not direct any change in the Work (regardless of the impact on the Contract for Construction and/or the time or cost of performing the Work) without the prior approval of the Owner's Representative.

(b) During the course of construction, Architect shall make periodic visits to the Site on a regular basis at necessary intervals (as often as the construction schedule requires, however no less frequently than _____) (i) to familiarize itself with the progress and quality of the Work; (ii) to determine that the Work is proceeding in accordance with the Contract Documents; and (iii) to be in a position to issue all certificates required or necessary under this Agreement. Architect shall use due diligence in making visits to the Site, and shall endeavor to guard Owner against defects and deficiencies in the Work, and to determine that the Work is progressing in a timely and orderly fashion according to the requirements of the Contract Documents. Architect shall keep Owner informed as to the quality of the Work, and shall promptly notify Owner in writing of any deficiencies which Architect detects or of which the Architect becomes aware. To the extent the Owner requests that the Architect make more than _____ visits to the Site in order to discharge Architect's responsibilities under this Section (excluding visits to determine whether or not the Work is Substantially Complete or Finally Complete and excluding visits necessary as a result of the errors, omissions, negligence or breach of contract of Architect or Architect's Consultants) the Architect shall be compensated for each such additional visit as an Additional Service pursuant to the applicable provisions of this Agreement.

(c) Architect shall have the duty to advise Owner of any Work which does not conform to the Contract Documents and therefore should be rejected, and if Owner consents thereto in writing, to so advise Contractor that such Work is rejected. Architect shall review and either (a) accept, or (b) reject, with or without requirements for modification, shop drawings, samples and other submissions of Contractor for compliance with the Contract Documents. If so requested by Owner, Architect shall review and prepare Change Orders for approval of Owner and execution in accordance with the Contract Documents

(d) During the Architect's periodic Site visits and as part of Basic Services, the Architect shall review the marked set of record construction documents maintained by the Contractor and shall notify the Contractor and Owner of any changes or markings which the Architect believes, based on such review, should be corrected or included in such construction documents to reflect accurately the final Work as installed and any changes made in the field during construction.

(e) Architect shall conduct inspections to verify the dates of Substantial Completion and Final Completion for the Work, and shall receive and forward to Owner for Owner's approval, any written warranties and related documents required by the Contract Documents and assembled by Contractor. In this regard, Architect acknowledges and agrees that Substantial Completion and Final Completion shall be as defined in the Contracts for Construction and that completion of the Work requires a clean and full turnover of all Work to Owner for use and occupancy as a first class, full service hotel with all amenities. Upon Substantial Completion, and again upon Final Completion, of the Work, Architect shall provide a certification (in the form attached hereto as Exhibit C) to Owner and to any other party Owner may designate, that, to the best of Architect's knowledge and belief, the Work is in compliance with the Contract Documents, the Requirements, and the Design Documents.

(f) At the request of Owner, Architect shall prepare lists specifying any deficiencies in, or disparities between, the Contract Documents and the Work, and prepare Architect's best estimate of the cost to remedy all such deficiencies and/or disparities. Prior to the expiration of the Contractor's warranty period, the Architect shall visit the Project and prepare a list of any items requiring warranty correction or attention from the Contractor.

(g) The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. These will be the Contractor's responsibility under the Contract for Construction.

2.05 Additional Services. As used in this Agreement, an "Additional Service" shall mean any work required of the Architect because of a Change in Scope as defined in Section 2.06 below. Except and only for such Additional Services, all work required of Architect pursuant to this Agreement shall be provided by Architect as part of Basic Services and without increase in the Basic Fee established in Article III hereof. Notwithstanding any other provision of this Agreement, the Architect shall not be entitled to compensation as Additional Services for any work rendered by the Architect or Architect's Consultants to the extent such work is or was required due to the Architects or Architect's Consultants' errors, omissions, negligence or breach of contract in connection with this Agreement. Additional Services shall be provided only if Approved by Owner, and they shall be paid for by Owner as provided in this Agreement, in addition to the compensation for Basic Services.

2.06 Change in Scope. As used in this Agreement, a Change in Scope is a revision in the design or construction of the Work (viewed alone and not in addition with other revisions to the Work) that is initiated or requested by Owner or is the result of a condition discovered at the Site and that requires the Architect to modify a Design Document previously approved in writing by Owner, and substantially expands, enlarges or diminishes the character, quantity or cost of the Services to be performed by the Architect. The reissue of drawings and specifications for the purposes of coordination and clarification, minor changes to architectural, structural, mechanical, plumbing and electrical drawings due to reasonable changes in the Owner's occupancy plan as the Work is occupied, and revisions, modifications or changes to drawings, specifications or other Design Documents or any other tasks performed by or required of the Architect as a result of any condition which the Architect was reasonably capable of ascertaining pursuant to any tests furnished to the Architect shall not be deemed a Change in Scope and, as such, will not entitle the Architect to any compensation for Additional Services.

(a) If the Owner requests any change in the design or construction of the Work that the Architect believes constitutes a Change in Scope, the Architect shall furnish Owner with written notice of such fact promptly after the change is requested by the Owner (and before any tasks relating thereto are performed by the Architect). The Architect shall initiate no task with respect to any Change in Scope (and shall not be entitled to any additional compensation based on any alleged Change in Scope) unless the Architect has first given notice as required by this Section and has received written authorization from Owner to proceed with such change. If the Architect gives written notice that Architect believes a Change in Scope has occurred and the Owner disagrees, the Architect shall, if so directed by the Owner, nonetheless proceed promptly and diligently to perform the tasks at issue, and the Architect's claim will be determined thereafter pursuant to the applicable provisions of this Agreement.

(b) The compensation payable to the Architect for any Additional Services requested and approved by Owner in connection with any Change in Scope shall be determined in accordance with Section 3.02 herein. In the event a Change in Scope results in a reduction in the scope of the Architect's Basic Services hereunder,

Owner shall be entitled to a credit to the Basic Fee (and/or any applicable Additional Services compensation payable to Architect under this Agreement) equal to the reasonable value of the Services deleted from the scope of Architect's Basic Services.

2.07 Time. Timely completion of the Work is of the essence. The Architect's Services shall be performed as expeditiously as practicable, consistent with good architectural practice, applicable standards of professional skill, care and diligence and the orderly progress of the Work and in accordance with the time limits established in the Design Services Schedule attached hereto as Exhibit D. The Design Services Schedule shall not be exceeded by the Architect, except to the extent of delays due to "Reasonable Cause," i.e. any cause that is beyond the reasonable control of, and cannot be avoided or mitigated by reasonable efforts taken by, the Architect or the Architect's Consultants. In the event the Architect's Services are delayed by Reasonable Cause, the Architect shall be entitled to an extension of time, equal to the amount of such delay, in order to complete the applicable portions of Architect's Services.

(a) Prior to the start of construction, Owner shall submit to the Architect, for review and comment, a schedule prepared by the Contractor and modified as necessary pursuant to discussions between the Contractor and Owner setting forth the sequence, timing and coordination for the construction of the Work (hereinafter referred to as the "Construction Schedule"). The Architect shall become thoroughly familiar with the Construction Schedule, as finally modified and approved by Owner, and shall be responsible to Owner for damages suffered by Owner due to delays in the Construction Schedule and to the completion of the Work caused by the Architect's failure, with reasonable promptness, to respond to requests for information or render interpretations necessary for the proper execution or progress of the Work, to review and take appropriate action upon the Contractor's submittals, or to prepare documents in connection with any proposed or approved changes to the Project.

ARTICLE III COMPENSATION OF ARCHITECT

3.01 Architect's Basic Fee. Owner will pay Architect, for all Basic Services required to be performed by Architect hereunder (including all Basic Services performed by any Architect's Consultants), on an hourly basis in accordance with the hourly rates set forth in Exhibit E hereto, provided that the total compensation to Architect for all Basic Services shall not exceed the amount of \$ _____ (_____ Dollars) (the "Basic Fee"). The Basic Fee shall be payable in monthly installments, measured by the actual time spent and progress made for the preceding month, to Owner's reasonable satisfaction, of Phases I, II, III and IV, based on the following Basic Fee allocation for each such Phase:

Phase I:	Schematic Design Phase (including programming and conceptual design)	\$ _____
Phase II:	Design Development Phase	\$ _____
Phase III:	Construction Document Phase	\$ _____
Phase IV:	Construction Phase	\$ _____

The Basic Fee includes, and the Architect shall pay, all Federal, State or local taxes and all sales, consumer, use and similar taxes applicable to the Services provided by Architect (or relating to the performance of any labor, furnishing of any materials or ownership, use, or transfer of any property in connection with such Services), and all taxes measured by the wages of any of Architect's employees (or any of Architect's Consultants) as required by law. The Architect shall indemnify and hold the Owner harmless on account of any such taxes assessed against the Owner under authority of any law.

3.02 Compensation for Additional Services. The Architect shall be compensated for any Additional Services directly performed by the Architect, in such amounts as shall be negotiated and agreed to by Owner and Architect in writing prior to proceeding with the Additional Services. In the event an agreement as to such compensation cannot be reached, then the Architect, pursuant to Owner's written request, shall proceed with the Additional Services and shall be compensated on an hourly basis in accordance with the hourly rates set forth in Exhibit E hereto. The Architect shall be directly reimbursed by Owner for any Additional Services performed by the Architect's Consultants in the same amount billed to the Architect for such Additional

Services. Such reimbursement shall be paid to the Architect no later than 30 days after Owner receives a written request for such reimbursement from the Architect together with a copy of all applicable invoices submitted to the Architect by the Architect's Consultant.

3.03 Reimbursable Expenses. In addition to the Basic Fee and compensation for any Additional Services performed by Architect, the following Reimbursable Expenses shall be paid to Architect, at the actual cost incurred by Architect or Architect's Consultants, without markup, and subject to such requirements, procedures and limitations as may be set forth in Owner's current Consultant Fee Billing and Reimbursable Guidelines: (a) reasonable costs of travel and subsistence incurred by Architect's representatives, while on trips approved by Owner in the performance of Services pursuant to this Agreement outside a thirty (30) mile radius of the corporate headquarters of Architect; (b) reasonable costs of shipping and delivery, long distance telephone and facsimile transmissions up to a maximum of \$____; (c) reasonable costs of prints, reproductions or additional sets of Design Documents, excluding those which may be produced for Architect's or Architect's Consultants' own use, which are in excess of those required to be furnished to the Contractor or as may be needed in connection with the construction of the Work, up to a maximum of \$____; (d) fees paid to governmental agencies for securing approvals of governmental authorities having jurisdiction over the Project; (f) if requested in writing by Owner, color renderings or models as required to delineate any portion of the Work on the Project.

The Owner shall not be required to pay (and Architect shall not charge to or be entitled to reimbursement for) any Reimbursable Expenses to the extent that the charge for such expense is in excess of the prevailing market rate for such item. Reimbursable Expenses in excess of Five Hundred Dollars (\$500.00) per item (or per group of similar or related items) which are not approved by Owner prior to being incurred will not be reimbursed. No payment by Owner of any Reimbursable Expenses shall constitute a waiver by Owner of Owner's right to refuse to reimburse any other similar or dissimilar expenses which were incurred without Owner's approval or which are otherwise not reimbursable hereunder, nor of Owner's right to demand repayment from Architect for any payment made by Owner to Architect which is not reimbursable hereunder.

3.04 Manner of Payment. No more frequently than on thirty (30) day intervals, Architect shall submit to Owner, an invoice for such portion of the Basic Fee as shall have been earned by Architect during the period covered by the invoice and any Reimbursable Expenses and Additional Services for which the Architect is then entitled to payment and shall also submit, in such detail as Owner may require, statements, invoices, vouchers or other documents (including without limitation waivers of lien in accordance with Section 7.01 hereof) applicable to the amounts for which the Architect is requesting payment. Owner shall promptly review such documents, and, if the same shall be approved by Owner, Owner shall arrange for payment thereof to Architect, or at Owner's discretion with respect to Reimbursable Expenses and/or Additional Services directly to any consultant, supplier or other entity entitled to receive payment. Records of Reimbursable Expenses and expenses pertaining to Additional Services performed by Architect on an hourly rate basis (and any records necessary for Owner to verify Architect's compliance with Section 3.05 below) shall be kept on the basis of generally accepted accounting principles, consistently applied, and shall be available to Owner or Owner's designated representatives, during normal business hours. Architect shall preserve all such records for a period of five (5) years after the date of final payment to Architect.

3.05 Anti-Kickback. All discounts or credits, volume rebate payments, commissions or other incentives to which Architect or Architect's Consultants may be entitled by virtue of the specification or designation of any equipment, material, supplies or other item in connection with the Work shall accrue and belong to Owner and shall be promptly paid by Architect to Owner. Architect shall not specify any element of the Work that is subject to any such discount, credit, rebate, commission or other incentive without prior disclosure to and approval of Owner.

ARTICLE IV TERMINATION

4.01 Owner's Right to Terminate.

(a) The Owner may terminate this Agreement without cause, upon seven (7) days written notice to the Architect. In the event the Owner terminates this Agreement without cause, the Architect shall be entitled to compensation, pursuant to the terms and subject to the limitations of this Agreement, only for the amount of the Basic Fee earned as of the date of termination (based on the stage of completion actually achieved by the

Architect, overall and in each Phase, as applicable, as of such date) plus compensation for any Additional Services then performed and any Reimbursable Expenses then incurred, both pursuant to the terms, and subject to the limitations, of this Agreement.

(b) The Owner may terminate this Agreement with cause, upon written notice to the Architect specifying the cause involved, which termination will not be effective unless the Architect has failed to commence, continue and make reasonable progress toward the correction of the cited cause within seven (7) days after receipt of the Owner's notice of intent to terminate. As used herein the terms "with cause" or "for cause" shall mean any action taken by the Owner because of the negligence, errors, omissions or breach of contract of the Architect, the Architect's Consultants and any other persons or entities for whom the Architect may be liable pursuant to the terms of this Agreement. In addition and without limitation to the foregoing, "cause" shall include any action taken by the Owner because of: (1) Architect's failure to comply in a full, timely and proper manner with the requirements of this Agreement; or (2) any circumstance in which the Architect (i) is insolvent or bankrupt, (ii) is otherwise unable to pay debts as they become due, (iii) has made an assignment for the benefit of creditors or has petitioned or applied to any tribunal for the appointment of a custodian, receiver or trustee for Architect or a substantial part of Architect's assets; (iv) shall have any such petition or application referred to in subsection (iii) above filed or any such proceeding commenced against Architect in which an order for relief is entered or adjudication or appointment is made and which remains undismissed for a period of thirty (30) days or more; or (v) by any act or omission shall indicate Architect's consent to, approval of, or acquiescence in any petition, application, or proceeding in bankruptcy, or order for relief, or the appointment of a custodian, receiver, or trustee for all or any substantial part of Architect's properties; or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more. In the event this Agreement is terminated by the Owner for cause, the Architect shall not be entitled to any further compensation and shall be liable to the Owner for (and Owner may deduct from any payments otherwise due to Architect hereunder) all costs and damages incurred by the Owner as a result of the Architect's negligence, errors, omissions or breach of contract (including attorney's fees and court costs). A termination by Owner for cause which is later determined to be wrongful shall be considered a termination without cause pursuant to Section 4.01(a) above.

4.02 Architect's Right to Terminate. This Agreement may be terminated by the Architect only if Owner fails to make payment to the Architect in such amounts as are required by this Agreement, within thirty (30) days after such payment is due pursuant to the provisions of this Agreement, for Services actually and properly performed by the Architect. In such event, the Architect may, upon seven (7) days' written notice to Owner, terminate the performance of Services under this Agreement. Unless such payment is thereafter received by the Architect within such seven (7) day period, the termination shall take effect without further notice to Owner. In the event the Architect properly terminates this Agreement, the Architect shall be entitled to compensation, pursuant to the terms and subject to the limitations of this Agreement, only for the amount of the Basic Fee earned as of the date of termination (based on the stage of completion actually achieved by the Architect, overall and in each Phase, as applicable, as of such date) plus compensation for any Additional Services then performed and any Reimbursable Expenses then incurred, both pursuant to the terms, and subject to the limitations, of this Agreement. In the event of a valid termination of Services pursuant to this Section, the Architect shall have no liability to Owner for delay or damage caused to Owner because of such termination.

4.03 Suspension. Owner may suspend this Agreement and all work by the Architect with or without cause, upon three (3) days written notice to the Architect. If, through no fault of the Architect, the Architect's Services are suspended for more than ten (10) consecutive days, then the Architect shall be compensated in the amounts required by Article III for all Basic and Additional Services properly performed by the Architect up to and including the date when the suspension commenced (all as measured pursuant to the applicable provisions of this Agreement and subject to the limitations set forth herein, and, with respect to Basic Services, based on the stage of completion actually achieved by Architect, overall and in each Phase, as applicable, as of the date of such suspension). Such compensation shall be due and payable to the Architect thirty (30) days after the expiration of the ten (10) day suspension period. If the Architect's Services are suspended for more than ninety (90) consecutive days and are thereafter resumed subsequent to any such suspension for more than ninety (90) consecutive days, the Architect's compensation shall be adjusted, as appropriate, pursuant to the negotiation and agreement of the Architect and Owner.

4.04 Drawings. In the event of termination of this Agreement for any reason, the Architect shall deliver to Owner a complete set of all Design Documents (including all CAD files and drawings) prepared by the Architect

and the Architect's Consultants prior to the date of termination, within seven (7) days after the date of termination.

4.05 Exclusive Rights and Survival. The Architect's sole and exclusive rights in the event of termination or suspension shall be those set forth in this Article IV and the Architect shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature under or arising out of this Agreement by virtue of such termination or suspension. All representations made by Architect herein, together with any and all causes of action and other rights and remedies which Owner may have as a result of breach of any term, covenant, condition hereof, together with all obligations of Architect hereunder, shall survive any expiration or termination of Architect's rights under this Agreement. All rights and remedies of Owner hereunder are cumulative and the exercise by Owner of one or more of such rights and remedies shall not preclude the exercise by Owner of any other rights or remedies whether concurrently or sequentially.

ARTICLE V INSURANCE

5.01 Insurance to be Maintained by Architect: Architect, at Architect's sole cost and expense, shall carry and maintain the following insurance with companies authorized to do business in the State of Missouri and possessing a minimum A.M. Best rating of A-VI:

- (a) Commercial General Liability Insurance covering bodily injury (including personal injury) and property damage with a combined single limit of not less than \$1,000,000. All such insurance shall include contractual liability coverage covering the Architect's indemnity obligations under this Agreement, if available from the insurer and shall include products and completed operations coverage. The limits of insurance required by this section may be satisfied through any combination of primary liability and umbrella liability policies, provided that if umbrella liability coverage is obtained, said limits should also be excess over any auto liability policy.
- (b) Worker's Compensation insurance coverage satisfying Architect's obligations and liabilities under the worker's compensation laws of each applicable jurisdiction, including employer's liability insurance with limits of not less than \$1,000,000 for each accident, disease-each employee and disease-policy limit;
- (c) Comprehensive Automobile Liability insurance covering bodily injury and property damage arising out of the use of any vehicles in the performance of the Architect's Services under this Agreement with a combined single limit of not less than \$1,000,000 per accident;
- (d) Property insurance on an "all risk" or "special risk" form covering all owned and non-owned assets Architect may use in the performance of its Services under this Agreement, including a waiver of subrogation from the insurer in favor of all Additional Insureds as defined in Section 5.02 below; and
- (e) Professional Errors and Omissions Liability Insurance covering the errors, acts or omissions of Architect in the performance of Architect's Services, with a limit of not less than \$1,000,000.

5.02 Forms of Policies: All policies of insurance required under the terms of Section 5.01 above, except those described in Sections 5.01 (b) and (e), shall name Owner and the constituent partners of Owner and their affiliates, agents and subsidiaries, as their interests may appear, as additional insureds ("Additional Insureds"), and shall contain a waiver of subrogation in favor of Owner and such other Additional Insureds. Certificates evidencing all insurance required by this Agreement shall be delivered to Owner prior to the commencement of Architect's Services and certificates of renewal or replacement insurance shall be delivered to Owner at least ten (10) days prior to the expiration of any applicable policy. All insurance policies required to be maintained by Architect under this Agreement shall provide for thirty (30) days prior written notice to the Owner of any termination, cancellation or material change in coverage or limits and shall be primary and not contributing with or supplemental to any insurance carried by any of the Additional Insureds as defined in this Section. All policies of liability insurance required under the terms of Section 5.01 above, except those described in Section 5.01(e), shall be on an "occurrence" form covering the full period when all Services required under this Agreement are to be provided. The insurance required under Section 5.01(e) may be on a "claims-made" form,

but must cover the full period when all Services required under this Agreement are to be performed and must continue in force (either by renewal or the procurement of tail coverage) for a period of not less than five (5) years following the completion of the Architect's Services.

5.03 Adequacy of Coverage: Architect acknowledges that neither Owner nor any of Owner's employees or agents has made any representation or warranty that the limits of liability specified to be carried by Architect pursuant to this Agreement are adequate to protect Architect. If Architect believes that any of such insurance coverage is inadequate, Architect shall obtain, at Architect's cost and expense, such additional insurance coverage as Architect deems adequate.

ARTICLE VI REPRESENTATIONS AND INDEMNIFICATIONS

6.01 Representations. Architect represents that Architect is a legal entity, duly organized, existing and in good standing, that the execution and delivery of this Agreement has been duly authorized by all necessary actions and resolutions, that this Agreement constitutes a valid and binding agreement of Architect, enforceable in accordance with the terms set forth herein, that Architect possesses experience and knowledge in projects of the same type and nature as this Project and shall perform all Services required by this Agreement in a manner consistent with those standards of professional skill, care and diligence applicable to a design professional of comparable experience and knowledge in similar circumstances, and that Architect is currently solvent and has the financial resources and capabilities to perform all obligations, duties and responsibilities pursuant to, and in accordance with, this Agreement. Architect understands that Owner has relied upon these representations without independent investigation as an inducement to enter into this Agreement.

6.02 Indemnification. The Architect agrees to indemnify and hold the Owner harmless from and against all damages, losses, costs and expenses, including reasonable attorneys' fees and court costs, arising out of the Architect's Services pursuant to this Agreement, to the extent caused by the negligent errors, acts, omissions or breach of contract by the Architect, Architect's Consultants and any other persons or entities for whom they are legally responsible. The Architect agrees to defend and save the Owner harmless from and against all lawsuits, demands, claims or actions asserted against the Owner to the extent they involve or assert claims, matters or allegations that, if successful, would require the Architect to indemnify the Owner.

6.03 Royalties and Patents. If any design, device, material or process covered by patent or copyright is used by Architect, Architect shall obtain all necessary authorizations and licenses to use the same, and shall indemnify and hold harmless Owner from any and all loss or expense arising out of, or in connection with, the use of such design, device, material or process.

6.04 Architect's Representatives. The Architect hereby designates _____ as the Architect's Project representative under this Agreement ("Project Representative"). The Project Representative shall be responsible for coordinating, scheduling and supervising the Architect's performance of all Services required by this Agreement, and shall be the person responsible for communicating, on behalf of the Architect, with the Architect's Consultants, the Owner, Owner's Consultants, and such other persons or entities involved with the Project, as necessary to facilitate the timely and proper performance of the Architect's Services hereunder. The Project Representative designated pursuant to this Section shall not be discontinued by the Architect and no new individual shall be designated as the Project Representative without the prior, written approval of the Owner, which approval shall not be unreasonably withheld.

ARTICLE VII MISCELLANEOUS

7.01 Lien Waivers. The Architect shall not be entitled to payment under this Agreement unless, at the time payment is requested, the Architect provides the Owner with an appropriate waiver of any lien rights against the Project belonging to the Architect with respect to the Services for which payment is requested, effective and conditional upon receipt of such payment from the Owner. Final payment shall not be made to the Architect unless a final lien waiver is submitted by the Architect to the Owner releasing and waiving all lien rights against the Project belonging to the Architect resulting from or arising out of this Agreement and the Services performed pursuant to this Agreement. The Architect shall pay each of Architect's Consultants within seven (7) days of the receipt of payment from the Owner, out of the amount paid to the Architect pursuant to the Architect's invoice,

the full amount paid to the Architect pursuant to such invoice for Services performed by such Architect's Consultant. In the event that any Architect's Consultant files a mechanic's lien or claim for lien against the Project (and provided Owner has paid Architect as required by this Agreement for the Services that are the subject of such lien or claim), Architect shall cause such lien or claim for lien to be formally released, bonded against or satisfied, and shall reimburse Owner for all costs and expenses, including but not limited to attorneys' fees and bonding and title indemnity expenses, incurred by them in contesting, discharging, releasing or satisfying such lien or claim for lien or defending or otherwise participating in such suit. Upon the settlement of such claim, any excess monies held by Owner from such security shall be paid to Architect. Architect shall similarly indemnify and protect and defend Owner in respect of any lien or claim for lien in favor of any person claiming by, through, or under Architect, including, among others, Architect's Consultants, that may appear after final payment has been made by Owner to Architect in the amounts required by this Agreement. The Architect shall have the right to contest any lien or claim covered by this Section, provided the Architect has bonded over such lien or claim and the Architect has agreed in writing to fully indemnify and defend the Owner with respect to such lien or claim.

7.02 Notices. Any notice required to be given hereunder shall be given in writing and shall be sent by certified or registered mail to the parties at the addresses hereinabove indicated. From time to time either party may designate another address or addressee for itself for all purposes under this Agreement by giving to the other party not less than fifteen (15) days advance written notice of such change of address or addressee in accordance with the provisions hereof.

7.03 Ownership and Use of Documents. All Design Documents and other drawings, plans, specifications, renderings and models and other documents relating to the Project or provided as part of the Architect's Services under this Agreement (including but not limited to all designs, specifications or other documents prepared or provided by the Contractor, Interior Designer or any other of the Owner's Consultants) and all ideas, concepts, themes, promotions, plans, programs, artwork, layouts, designs, slogans, graphics, written descriptions or other creative products (including but not limited to photographs or negatives, slides, sketches or other artwork or renderings, videos, digital images, films, domain names, electronic code or other items) that are created as a result of or pursuant to this Agreement (collectively, "Documents") shall be the property of Owner whether the Project is executed or not, and shall not be used by any person other than Owner on projects other than the Project unless expressly authorized in writing by Owner, and Owner shall have the full and complete right to use the Documents and the ideas and designs contained therein for information and reference in connection with the full design and construction of the Project, the Owner's use and occupancy of the Project, the maintenance and repair of the Project and for additions, alterations or future construction to the Project.

- (a) Architect agrees that all Documents shall be deemed a "work made for hire" in those jurisdictions that recognize such a concept, and shall immediately upon creation become the sole and exclusive property of Owner along with all right, title and interest therein, including, without limitation, all copyright, patents, industrial design, trademark, and trade dress rights and any other proprietary or intellectual property rights (collectively "IP Rights") in such Documents, free of all claims, to use or not use, with or without modification, in all forms now known or hereinafter devised throughout the world, as Owner in Owner's sole discretion may wish. In this regard, Owner shall be recognized as the sole "author" and owner of the Documents and shall be entitled to obtain any relevant intellectual property registrations in Owner's own name and covering terms and extensions and renewals thereof. In those jurisdictions that do not recognize the concept of a "work made for hire," or in the event any Documents are determined not to constitute a work made for hire, Architect hereby irrevocably sells, assigns, conveys and grants to Owner, all IP Rights in and to such Documents, free of all claims, to use or not use, with or without modification, in all forms now known or hereinafter devised, throughout the world, as Owner in Owner's sole discretion may wish. Architect shall assist Owner, to the extent necessary in the protection or procurement of Owner's IP Rights in and to the Documents, and shall execute and deliver such further instruments and documents and do such other acts and things as Owner may reasonably request in order to effect or confirm Owner's ownership of the Documents or the IP Rights conveyed by this Agreement. Architect agrees that Architect shall not, by virtue of this association with Owner, acquire any IP Rights in any Documents, or any rights in the goodwill, or other asset or property of Owner.

- (b) Owner shall receive good and clear right and title to the Documents and the ideas and designs contained therein. Architect represents that the Documents developed pursuant to this Agreement and the ideas and designs contained therein will not infringe any IP Rights of a third-party and Architect agrees to defend and hold Owner harmless against any claim for the infringement of any such IP Rights arising out of Owner's use or ownership of the Documents. If any design, device, material or process covered by patent or copyright is used by Architect, Architect shall obtain all necessary authorizations and licenses to use the same, and shall indemnify and hold harmless Owner from any and all loss or expense arising out of, or in connection with, the use of such design, device, material or process.
- (c) Owner acknowledges that if this Agreement is terminated prior to the completion of the Construction Document Phase, then the Design Documents provided by the Architect pursuant to this Agreement will be preliminary only and not intended for final construction of the Work. Accordingly, Owner agrees that in such event, if the Design Documents are used by Owner to construct the Work without retaining Architect to provide further plans, specifications and other design documents articulating the Work, then the Architect shall not be responsible for such use.
- (d) Architect specifically acknowledges and agrees that various aspects of the design of the Project, including but not limited to layout arrangements, architectural features, finishes and details and interior design elements, represent the signature and brand of the Owner and as such are proprietary and unique to Owner. Accordingly, Architect agrees that Architect will not use any Documents relating to this Project (including the Design Documents), or any of their underlying features, to design another project without the prior and written approval of Owner. As used herein the term "Proprietary Information" shall mean all information (including the Design Documents and any other Documents created pursuant to this Agreement) which the Architect acquires (whether directly from the Owner or through the performance of Services on the Project) concerning the present and future plans of the Owner, the operations of the Owner's business, or the use of the Project or the Project's design, construction, features, appearance, marketing, layout or decor. The Architect represents to the Owner that the Architect has and employs policies and procedures, including but not limited to notices to the Architect's employees and the Architect's Consultants and their respective employees, to protect Proprietary Information and to prevent the unauthorized publication and disclosure of Proprietary Information. The Architect agrees that the Owner's Proprietary Information shall be subject to such policies and procedures. Specifically, and in addition, the Architect agrees that the Architect will not disclose any Proprietary Information to any person, either internally or externally, (except as directly necessary for the performance of the Architect's Services) without the prior and written consent of Owner, and will not use, copy or distribute any Proprietary Information (or any document containing Proprietary Information) except to the extent directly necessary for the performance of the Architect's Services under this Agreement. The Architect agrees, upon completion of the Architect's Services, to return to the Owner or destroy all documents containing Proprietary Information (except for the Architect's record set of the Design Documents).
- (e) Owner agrees that, notwithstanding Owner's full ownership of all Documents and the ideas and designs contained therein, Architect shall have the ability, in connection with the design of other projects and without the Owner's prior consent, to use any generic design concepts that are contained in the Documents (such as standard connection instructions, typical architectural details and general engineering specifications), provided such design concepts were already commonly used by the Architect prior to the execution of this Agreement and provided Architect shall not be entitled to use any improvements or modifications to such concepts that are developed as a result of or pursuant to this Agreement, which improvements and modifications shall be included in the Documents owned by Owner.

7.04 Assignment: Binding Effect. Architect binds itself, and all successors, assigns and legal representatives of Architect to Owner and to the partners, successors, assigns and legal representatives of Owner with respect to all covenants, conditions, stipulations and provisions of this Agreement. Architect shall not assign or transfer any interest in this Agreement without the approval of Owner. A change of more than

twenty (20) percent on a cumulative basis of the ownership interest in the capital stock, partnership or other ownership interests in the Entity identified as the Architect herein shall constitute an assignment of this Agreement. Owner shall have the right, in Owner's discretion, to assign and/or transfer Owner's interest in this Agreement to any person or entity either outright or as collateral security for a loan. Upon assumption of this Agreement by such person or entity, Owner shall have no further liability under this Agreement.

7.05 Entire Agreement, Amendments and Invalidity. This Agreement is intended to and shall govern all Services provided by Architect for the Project, whether initiated or performed prior or subsequent to the execution of this Agreement, and the effective date of this Agreement shall be deemed to be the first date when any such Service was so provided by Architect. In the event that any one or more of the provisions herein contained shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remaining or other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement, together with all the Exhibits attached hereto and incorporated herein represents the entire and integrated agreement between the parties hereto and supersedes all other solicitations, proposals or requests for qualifications or bids and any responses thereto and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which enforcement of such modification, waiver, amendment, discharge or change is or may be sought. This Agreement may be executed in counterparts, each of which shall be deemed an original agreement, but all of which shall constitute one and the same Agreement. This Agreement shall be construed in accordance with and governed by the laws of the State in which the Project is located. The waiver of either party of any breach or violation of, or default under, any provisions of this Agreement shall not be deemed a continuing waiver of such provision or a waiver by such party of any other provision or of any subsequent breach or violation of this Agreement or default thereunder. The Article, Section and Paragraph headings, and other titles and captions used in this Agreement, are inserted only for convenience of reference, and are not intended to and shall in no way define, limit, enlarge or prescribe the rights or obligations of the parties, or affect the meaning, construction, scope or extent of any provisions of the Agreement.

7.06 Limitation of Owner's Liability. Notwithstanding any other provision of this Agreement to the contrary, the liability of Owner under this Agreement (whether in contract or in tort) is limited solely to the interest of Owner in the Project. No partner, shareholder, member or any other person with an ownership interest in the Entity identified as owner herein, nor any such person's separate property or assets, shall be personally liable or subject to execution for any claim arising out of, or attributable to, or related to, this Agreement. A deficit capital account of a partner of Owner shall not be deemed to be an asset of Owner.

7.07 Hazardous Materials. Architect shall not be responsible for the identification and/or subsequent removal or encapsulation of any hazardous materials from the Site. In the event the Architect encounters any materials at the Site which are hazardous (including but not limited to asbestos, PCBs) or other materials or substances which the Architect knows will require special handling, disposal or treatment, the Architect shall immediately stop performing any Services in the affected area and shall immediately report the condition to the Owner. All Services involving or affected by the condition shall not thereafter be resumed until such time as the material has been disposed of, abated, or otherwise removed, remediated or handled as required by applicable law.

7.08 Owner's Representative. The Owner hereby designates _____, as Owner's representative authorized to act on the Owner's behalf with respect to this Agreement (hereinafter the "Owner's Representative"). In the event Architect receives any instructions or approvals, either in writing or orally, by persons other than the Owner's Representative designated pursuant to this Section, the Architect shall notify the Owner's Representative of such instructions or approvals and shall not act upon such instructions or approvals until provided with directions from the Owner's Representative. Unless otherwise agreed in writing between the parties or otherwise provided in this Agreement, the Owner's Representative shall be responsible for communicating with the Architect and the Architect shall not accept requests or other directions in connection with the performance of the Services pursuant to this Agreement unless such request or direction is issued by the Owner's Representative. A new representative may be designated by the Owner pursuant to this Section by providing the Architect with three (3) days' prior, written notice.

7.09 Equal Opportunity. Architect agrees to comply with the provisions of the Equal Opportunity Clauses at 41 CFR Sections 60-1.4(a), 60-250.5(a) and 60-741.5(a), which are hereby incorporated into this Agreement by reference.

**ARTICLE VIII
DISPUTES**

8.1 Disputes.

All claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by resort to litigation in any court of competent jurisdiction located in the State of Missouri. The Owner and Architect each expressly consent and submit to the jurisdiction of any such court and agree to accept service of process outside the State where the Project is located in any matter to be submitted to any such court pursuant to this Agreement. In any action brought by either party arising out of or relating to the Project, this Agreement or the breach thereof, reasonable attorneys' fees shall be awarded to the prevailing party, measured by the extent to which such party in fact prevails in the action as determined by the extent such party in fact succeeds in each claim or defense asserted by the party.

**ARTICLE IX
SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

OWNER:

ARCHITECT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

**EXHIBIT A
PROJECT PROGRAM**

**EXHIBIT B
PROJECT BUDGET**

For purposes of the Agreement, the 'Project Budget' shall be \$_____.

EXHIBIT C
ARCHITECT'S CERTIFICATE

Date:

Gentlemen:

This Certificate is rendered in connection with the _____ (the "Project"), and pursuant to the Owner-Architect Contract entered into as of _____ by the undersigned and _____ ("Owner") (the "Agreement"). All capitalized terms in this Certificate shall have the meaning set forth in the Agreement.

It is the understanding of the undersigned that you will be relying upon this Certificate and this reliance shall not be reduced or affected by any inspections, observations or tests taken or made by you or on your behalf.

The undersigned does hereby certify, represent and warrant to you as follows:

1. The undersigned is the Architect who prepared or supervised the preparation of the final Design Documents for the Work.

2. Copies of all such final Design Documents listed on Schedule I hereto, have been delivered to you.

3. The design, existence and proposed use of the Work as set forth in the Design Documents complies with all applicable Requirements.

4. The Work is ready for occupancy and all certificates, permits and licenses necessary to permit the occupancy and use of the Work have been obtained from the appropriate governmental authorities, including required certificates of occupancy and approval of all installations therein. All warranties and/or guarantees required by the Contract Documents have been obtained and copies thereof delivered to Owner.

5. All utility services necessary for the uninterrupted and orderly operation of the Work in accordance with the Design Documents delivered to you are available to the Project at the boundaries thereof. All connections have been made to abutting public water, sewer, gas and electrical facilities.

Regards,

**EXHIBIT D
DESIGN SERVICES SCHEDULE**

- A. Start Design Services _____
- B. Complete Program _____
- C. Complete Schematic Design _____
- D. Complete Design Development _____
- E. Complete Construction Documents _____

**EXHIBIT E
HOURLY RATES**

<u>Position</u>	<u>Billing Rate</u>
Principal	\$ _____
Project Manager	\$ _____
Project Architect	\$ _____
Professional Staff	\$ _____
Clerical	\$ _____