



**EXHIBIT A**

**MEMORANDUM OF UNDERSTANDING**

November 16, 2016

Architect: DLA Architects, Ltd.  
DLA Project Number: R.15.044

Hoffman Estates Park District hereby authorizes the Architect to provide professional services for the Project identified herein, which professional services shall be subject to all terms and conditions of the Master Agreement B101 dated April 25, 2016 unless specifically provided otherwise in this Memorandum of Understanding.

**Location / Description of Project:**

Hoffman Estates Park District  
Prairie Stone Sports and Wellness Center  
5050 Sedge Blvd.  
Hoffman Estates, IL 60192

Description of Project:

Aesthetic improvements of the shower and toilet facilities.

**Scope of Services, Including Consulting Services to be provided by Architect:**

The scope of Architectural services will include Schematic Design, Design Development, Construction Documents, Bidding and Construction Administration services. The consulting services provided by the Architect include Mechanical, Electrical, Plumbing and Fire Protection Engineering Services.

**Architect's Consultants:**

- Mechanical, Electrical, Plumbing & Fire Protection Engineer: Berg Engineering Consultants, Ltd.

**Architect's Compensation:**

The Architect shall be compensated for Basic Services for a fee of 9.5% of the lowest competitively bid total construction cost including design alternates if applicable.

**Reimbursable Consultants**

This fee is assuming that the Park District will be utilizing a Construction Management delivery method.

**Project Schedule:**

Schematic Design	January 2017
Design Development	January / February 2017
Owner Review of DD	End of February 2017
Construction Documents	March 2017
Owner Review of CDs	End of March 2017
Revisions as required	April 2017
Bidding	End of April 2017
Commencement of Construction	TBD
Substantial Completion	TBD

**Owner's Project Representative:**

Gary Buczkowski  
Director of Planning & Development

**Owner's Consultants:**

- Environmental Consultant

**Additional Services Authorized:**

- Reimbursable expenses in accordance with Article 11.8
- All Permitting
- Multiple phased bid packages – negotiated separately

**Site Observation:**

The Architect shall visit the site in accordance with Article 3.6.2.1 on an average of one visit per week during major construction activities.

**Completion of Architect's Services:**

If the Construction Phase services required for the project have not been completed within sixty (60) days of the date of Substantial Completion through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as an Additional Service.

**Architect's Hourly Rate Schedule:**

<b>Category</b>	<b>Rate</b>
Senior Principal	\$200.00
Principal	\$175.00
Director	\$160.00
Senior Architect/Senior PM	\$150.00
Computer Graphics Manager	\$138.00
Senior Project Manager	\$150.00
Architect / Project Manager	\$132.00
Job Captain	\$115.00
Intern Architect	\$105.00
CADD Technician / Drafter	\$85.00
Senior Administration	\$90.00
Administration	\$75.00

**ACCEPTANCE OF MEMORANDUM OF UNDERSTANDING**

Architect: \_\_\_\_\_ Date \_\_\_\_\_  
DLA Architects Ltd.  
Carrie Matlock, Principal

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Owner: \_\_\_\_\_  
Hoffman Estates Park District Date

\*\*Terms and conditions of this agreement identified above, shall not be disclosed, or allowed to be disclosed, to any third party, school district, architectural firm, legal firm, or private citizen unless through compliance with the Freedom of Information Act without the express written consent of DLA Architects. Hoffman Estates Park District shall provide written notice of all Freedom of Information Act requests to DLA Architects within 3 business days of the request receipt. Thanks for your cooperation in this matter.



# AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

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

**AGREEMENT** made as of the Twenty-fifth day of April in the year Two Thousand Sixteen  
(*In words, indicate day, month and year.*)

**BETWEEN** the Architect's client identified as the Owner:  
(*Name, legal status, address and other information*)

Hoffman Estates Park District  
1685 W Higgins Rd  
Hoffman Estates, IL 60169  
Telephone Number: 847-310-3606  
Fax Number: 847-885-7523

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

DLA Architects, Ltd.  
Two Pierce Place  
Suite 1300  
Itasca, IL 60143  
Telephone Number: 847-742-4063  
Fax Number: 847-742-9734

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

This Agreement is a Master Agreement and shall be the agreement for all projects authorized by the Owner. Specific projects under this Master Agreement shall be authorized in writing by the Owner by a Memorandum of Understanding (hereinafter "MOU"), which MOU shall be attached hereto as Exhibit A and made a part of this Master Agreement for each project authorized. As additional projects are authorized pursuant to this Master Agreement, such projects shall be authorized by subsequent MOU's, each of which shall be attached to this Master Agreement as Exhibit A for the Project authorized

The Owner and Architect agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in Exhibit A,, the MOU for a specific project authorized pursuant to this Master Agreement and is attached hereto and incorporated herein for each project authorized by Owner under this Master Agreement:

The Memorandum of Understanding (hereinafter "MOU") for a Project authorized pursuant to this Master Agreement shall contain all Project specific requirements, such as Scope of Services, Project Schedule, Project Budget, Site Observation requirements, Compensation and other project specific terms which may supplement, supersede or modify the Master Agreement. To the extent of any inconsistency, conflict or discrepancy between the Master Agreement and the MOU, Exhibit A, the MOU shall control. Project as used herein shall mean the Project authorized by the MOU, Exhibit A.

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

- .1 Commencement of construction date:

As identified in the Memorandum of Understanding for the Project

- .2 Substantial Completion date:

As identified in the Memorandum of Understanding for the Project

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement and in the MOU, Exhibit A, for the Project. In the event of an inconsistency or conflict between this Agreement and Exhibit A, Exhibit A shall govern for the Project

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

1,000,000.00 per occurrence and in the aggregate

The Owner shall be included as an insured under the CGL and under the commercial umbrella, if any. This insurance shall apply as primary with respect to any other insurance or self-insurance afforded to the Owner. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse or underground property damage.

.2 Automobile Liability

1,000,000.00 per occurrence or CSL. If necessary, the policy shall be endorsed to provide contractual liability coverage.

.3 Workers' Compensation – Statutory Limits

Employers Liability:           500,000.00 Each Accident  
  500,000.00 Disease - EA Employee  
  500,000.00 Disease - Policy Limit

.4 Professional Liability

1,000,000.00 Each Claim/Annual Aggregate

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**Evidence of Insurance.** Prior to beginning services, the Architect shall furnish Owner with a certificate(s) of insurance and applicable policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for thirty days written notice to Owner of insurance cancellation of the policies of insurance referred to therein. Written notice shall be by certified mail, return receipt requested. Failure of the Owner to demand such insurance, endorsement or other evidence of full compliance with these insurance requirements or failure of the Owner to identify a deficiency in the evidence provided shall not be construed as a waiver of Architect's obligation to maintain such insurance. The Owner shall have the right, but not the obligation of prohibiting the Architect from entering the Project site until such certificates or other evidence that such insurance has been placed in complete compliance with these requirements is received and approved by the Owner. Failure to maintain such insurance may result in a termination of this Contract at Owner's option. The Architect shall provide certified copies of any insurance policy within ten (10) days of Owner's written request for said copies.

Further, to the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner and its officers, officials, and employees ("Indemnitees") from any against liabilities, damages, losses and expenses incurred by the Indemnitees to third parties, include reasonable legal fees (attorney and paralegal fees and court costs) recoverable under applicable law, arising out of or resulting from the performance of the Architect's services, provided that any such liabilities, damages, losses or expenses (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property other than the work itself, including the loss of use resulting therefrom, and (ii) to the extent caused by any negligent or wrongful act or omission of the Architect, any of its Subconsultants, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Paragraph. The Architect shall similarly indemnify and hold harmless the owner, its officers, officials and employees from any and all liabilities, damages, losses and expenses, including reasonable attorney's fees recoverable under applicable law, which the Indemnitees incur to third parties by reason of the Architect's breach of the standard of care in the performance of the professional services under this Agreement.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in the MOU, Exhibit A, for the Project and shall include, if so provided in Exhibit A, usual and customary structural, mechanical, and electrical engineering services. Services not set forth in the MOU, Exhibit A are Additional Services.

As part of Basic Services, the Architect shall comply with the terms of this Agreement. The Architect, as part of Basic Services, agrees to maintain, without charge to the Owner, all records and documents for projects of the Owner on which Architect has provided services, in compliance with the Freedom of Information Act, 5 ILCS 140/1 et seq. In addition, the Architect shall produce records which are responsive to a request received by the Owner under the Freedom of Information Act so that the Owner may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, the Architect shall notify the Owner and if possible, the Owner shall request an extension so as to comply with the Act.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings reasonably requested by Owner, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner only 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 a reasonable time for approval of submissions by authorities having jurisdiction over the Project. The Owner shall render decisions in a timely manner so as not to impact the approved schedule. 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, design change, or substitution made without the Architect's approval.

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

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

### § 3.2 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, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches for major systems only. The Architect shall reach an understanding with the Owner regarding the requirements of the Project

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

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

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

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

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare



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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

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

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#### § 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 of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the written publicly available design requirements of governmental authorities having jurisdiction over the Project.

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

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

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

§ 3.4.6 Any defective designs or specifications not to the level of quality as is customary in the industry furnished by the Architect shall be corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for, all or part of the Architect's services hereunder, or of the Project itself, shall in no way alter the Architect's obligations or the Owner's rights hereunder.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

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

##### § 3.5.2 COMPETITIVE BIDDING

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

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

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;



- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 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 procuring the reproduction 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; and
- .3 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 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall 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™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment or sixty (60) days after Substantial Completion, whichever occurs first.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site as set forth in the MOU, Exhibit A, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to recommend to the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by Contractor, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect. The Architect administratively shall receive from the Contractor mechanic's lien waivers and the Contractor's sworn statements listing subcontractors and material suppliers before issuing payment certificates, and if such waivers or sworn statements, cannot be obtained, then the Architect's Certificate shall be conditional upon receipt of such waivers. The Architect is not responsible to ascertain the accuracy, validity or legal sufficiency of any lien waivers or sworn statements from the Contractor.

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

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

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

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

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§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. Any change order or series of change orders resulting in an increase in the contract sum of \$10,000.00 or more, or an increase in the contract time of 30 days or more must be approved in writing by Owner in order to be binding upon Owner, and then only if one of the following criteria is satisfied: Owner determines that the circumstances requiring the change a) were not reasonably foreseeable at the time the Contract was signed; b) are germane to the original contract as signed; or c) are in the best interest of the Owner and are authorized by law.

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

#### § 3.6.6 PROJECT COMPLETION

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

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

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

Init.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

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

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

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

See MOU, Exhibit A, for the Project for authorized Additional Services.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect’s schedule.

Init.



§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .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 bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 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;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor
- .2 See MOU, Exhibit A for number of visits to the site by the Architect over the duration of the Project 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, additional inspections will become Additional Services to the Contract and will be invoiced on a Time and Material Basis. Language charging the Contractor for these services will be included in the Architects Construction Documents.

Init.



.4 One ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within the time period set forth in the MOU, Exhibit A, for the Project, , through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. 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.

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

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

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

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, but the Owner has no obligation to review or discover such faults or defects in the Project or in the Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through



the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner, but shall:

- .1 Include General Contractor's overhead and profit (General Conditions) associated with the project;
- .2 Include alternate bids. For alternate bids not accepted, 80% of the cost associated with the alternate shall be used for Architect's fee calculations. Deductive alternates will be treated as added costs;
- .3 Include full change order amount for all change orders as it increases contract amount. For change orders not accepted, 80% of the cost associated with the change order shall be used for the Architect's fee calculation.
- .4 Include change order credits as added project costs;
- .5 For change orders that do not change the construction cost in proportion to the design work required, the Architect's fee shall be computed on a time and material basis.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect, and the Architect shall have not responsibility for such variance nor shall the Architect be responsible if the bids or Cost of the Work exceeds the estimate or Owner's budget.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

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

Init.



§ 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 lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by twenty (20%) percent or less, the Architect shall modify the Construction Documents as requested by the Owner as an Additional Service. If the lowest bona fide bid exceeds the Owner's budget for the Cost of the Work by more than twenty (20%) percent, the Architect shall modify the Construction Documents without additional compensation to reduce the Cost of the Work to conform to Owner's budget. 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 If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, and maintaining, the Project, and for informational purposes only for altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.



## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

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

### § 8.2 MEDIATION – Intentionally Deleted.

*(Paragraphs deleted)*

§ 8.2.4, The method of binding dispute resolution shall be the following:

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

## 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 for the Project. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

§ 9.3 If the Owner suspends the Project for more than 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 for the Project 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 for the Project upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and any costs incurred in connection with the termination.

§ 9.7 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Illinois.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including prompt payment of all sums due and owing the Architect.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall report to the Owner any hazardous materials discovered by the Architect at the Project site.

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Furthermore Architect or Owner shall not withhold such information if, in doing, would violate the law or create a risk of significant harm to the public. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information designated as "confidential" or "business proprietary" by Owner.

§ 10.9 **Independent Contractor.** Architect agrees that all services performed under this Agreement are being performed by Architect as an independent contractor and not as an employee or agent of the Owner. This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or

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relationship, partnership or formal business organization of any kind or create an employer/employee relationship between Owner and Architect. Architect's employees, subconsultants, subconsultant's employees or any person supplied by Architect in the performance of Architect's obligations under this Agreement and does not entitle said person to rights or benefits from Owner normally associated with an employment relationship, such as, but not limited to, civil service, retirement, personnel rules which accrue to such persons, health insurance, motor vehicle insurance, life insurance, worker's compensation, sick leave or any other fringe benefits. Architect and its subconsultants shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons.

**§ 10.10 Retention of Records.** Architect and any of its subconsultants shall keep and maintain accurate books of record and account, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities, and obligations incurred under this Agreement, and all papers, files, accounts, reports, costs proposals with backup data and all other materials relating to work under this Agreement and shall make all such materials available at the office of the Owner at any reasonable time during the term of this Agreement and for a length of time of five (5) years from the date of final payment to Architect or termination of this Agreement for audit, inspection and copying upon Owner's request.

**§ 10.11 Subcontracts.** The Architect shall insert into all subcontracts the paragraph herein entitled "Insurance", "Retention of Records" and "Indemnification".

**§ 10.12 General Compliance with Laws.** The Architect shall comply with applicable federal and state laws and local ordinances and regulations in providing services applicable to and within the scope of this Agreement.

**§ 10.13 Headings.** The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraph or of this Agreement nor in any way affect this Agreement.

**§ 10.14 Drug Free Workplace Act.** The Architect shall comply with the Illinois Drug Free Workplace Act as contained in the Illinois Compiled Statutes Ch. 30, sect 580/1 et. seq.

## ARTICLE 11 COMPENSATION

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

*(Insert amount of, or basis for, compensation.)*

As set forth in the Memo of Understanding, Exhibit A, for the Project.

**§ 11.2** For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

In accordance with the Hourly Rates set forth herein.

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation.)*

In accordance with the Hourly Rates set forth herein.

**§ 11.4** Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Ten percent ( 10 %), or as otherwise stated below but not before written authorization by Owner:



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

Schematic Design Phase	Twenty percent (	20	%)
Design Development Phase	Fifteen percent (	15	%)
Construction Documents Phase	Forty percent (	40	%)
Bidding or Negotiation Phase	Five percent (	5	%)
Construction Phase	Twenty percent (	20	%)
<b>Total Basic Compensation</b>	<b>one hundred percent (</b>	<b>100</b>	<b>%)</b>

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below.

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

As set forth in the Memo of Understanding, Exhibit A, for the Project. The per hourly rates shall remain constant through the end of the year and may be adjusted annually thereafter.

**Employee or Category**

**Rate**

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows, for which the Architect shall submit photocopies of reimbursable expense support for such expenses:

- .1 ~~Intentionally Deleted...~~ Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, 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, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses;
- .0 Site office expenses; and
- .10 Other similar Project-related expenditures.
- .11 Reimbursable expenses will be credited with all rebates, refunds or dividends; and a proportion of any volume rebates or free material credits earned with purchases of materials or other goods and services charged to reimbursable expenses.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) of the expenses incurred.

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

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

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Per mutual agreement between Owner and Architect.

#### § 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. *(Paragraphs deleted)* Payments shall be due and interest calculated in accordance with the *Illinois Governmental Prompt Payment Act*.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages.

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

#### ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 No failure of either the Architect or the Owner to exercise any power given in this Agreement or to insist upon strict compliance by the other party with any obligation hereunder and no custom or practice of the Owner or the Architect at variance with the terms hereof shall constitute a waiver of the right of either party to demand exact compliance with the terms of this Agreement.

§ 12.2 Any claims arising out of this Agreement shall be brought against the contracting parties and not against any individual director, officer or employee of a party.

§ 12.3 The Architect shall afford the Owner and its counsel the opportunity to review and comment upon the instructions to bidders, forms, bidding requirements, and supplementary conditions, if any, in sufficient time to permit any changes deemed necessary by Owner prior to their being published and available to the bidding public.

§ 12.4 Notwithstanding anything to the contrary contained in this Agreement, the Owner's review and acceptance or approval of any and all documents or other matters required herein shall be for the sole purpose of furnishing the Architect with information as to the Owner's objectives and goals with respect to the Project. Such review and acceptance or approval shall not be for determining the propriety, accuracy or completeness of any of the Architect's services, other than as they relate to the Owner's general programming goals, and therefore shall not create any liability on the part of the Owner for errors, omissions or inconsistencies or other faults in the Architect's services. However, Owner's approval at the end of each phase shall represent approval for the Architect to move to the next phase of services and Owner shall be liable for additional compensation due under the terms hereto for Owner initiated changes.

§ 12.5 To the extent the following applies, the Architect shall reasonably comply with all federal, state and local laws, rules and regulations applicable to its services such as building codes, the Americans with Disabilities Act, the requirements of the Equal Employment Opportunity Clause of the Illinois Human Rights Act, (775 ILCS 5/1-105), the rules and regulations of the Illinois Department of Human Rights, the Public Works Employment Discriminations Act (775 ILCS 5/10 et. seq.). The Architect's signature on this document herein certifies that it had a sexual harassment policy in effect which complies with 775 ILCS 5/1-5.

§ 12.6 The Architect makes no warranties, express or implied.

§ 12.7 In the event of Architect's non-compliance with the provisions of the foregoing Equal Employment Opportunity Clause, the Illinois Human Rights Act, or the rules and regulations of the Illinois Department of Human Rights, the Architect may be declared ineligible for future contracts or subcontracts and this Agreement may be canceled and voided in whole or in part and such other sanctions or other penalties may be imposed as provided by statute or regulation. However, any forbearance or delay by the Owner in canceling this Agreement shall not be

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constituted as and does not constitute the Owner's consent to such violation or the Owner's waiver of any rights it may have.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

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

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- .2

.3 Other documents:

Exhibit A, the Memorandum of Understanding (MOU) for the Project.

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

**OWNER**

**ARCHITECT**

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

Mr. Dean Bostrom, Executive Director

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

**DLA Architects, Ltd.**

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

Carrie Matlock, Partner

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

