ST. CHARLES SINCE 1834	**AGENDA ITEM EXECUTIVE SUMMARY**	Agenda Item number: 4.b
	Title:	Recommendation to Award Contract to FGM Architects for Professional Architectural Services related to the Police Facility
	Presenter:	Peter Suhr & Jim Keegan

Meeting: Government Services Committee	Date: January 23, 2017	
Proposed Cost: $1,443,690	Budgeted Amount: $1,500,000	Not Budgeted: ☐

Executive Summary (*if not budgeted please explain*)**:**

Dating back to January of 2015, City staff has been working with FGM Architects to analyze existing conditions of our current Police Facility, study several Master Plan solutions, prepare cost estimates, evaluate potential sites for a new Police building and design floor plans which would satisfy the current and future space needs of our Police Department.

On January 26, 2015, the Government Services Committee approved the award of architectural services as described above to FGM Architects as requested by staff. At that time, City staff prepared a request for qualification and received responses from seven qualified architectural firms. City Staff assembled a team to review each proposal and interviewed the top four firms. FGM Architects assembled a superior team and was selected by our review committee. FGM, based out of Oak Brook, has extensive project management experience, a vast resume of similar projects and has the longest and broadest track record of successfully completed Illinois Police Stations.

Those architectural services which included an Architectural Needs Assessment Analysis and Master Plan Study have been concluded. As directed by this committee and recommended by staff, it is now time for the project to proceed into Basic Services with the help of FGM Architects. Basic Services include a Schematic Design Phase, Design Development Phase, Construction Document Phase, Bidding & Negotiation Phase, Construction Phase and Additional Services Phases as outlined in the attached AIA Document B103-2007.

While the original 2015 Request for Qualifications did not specifically include basic services, future phases of the project (including basic services) were identified as potential work beyond the initial Phase I of the project. FGM and other respondents provided information to the selection committee qualifying their experience for all services required for a project of this type from start to finish. It was the intent of the selection committee to successfully "build a professional team for Phase I of the project who could seamlessly transition to Phase II of the project". We were seeking and evaluating teams based on their ability to manage a Police Facility project from conceptual design, through construction and beyond. FGM has performed exceptionally on Phase I of the project, is in good standing with the City and extremely qualified to continue into Phase II.

FGM Architects will provide said professional services for a Lump Sum Fee of 8.0% of the project's estimated Cost of Work as described in the attached AIA Document B103-2007. 8.0% fee for Architectural Professional Services is considered fair and reasonable to staff based on the project size, cost and scope. FGM Architects is providing all Basic Services as described above and significant additional services for a comprehensive package at a comparable rate to other local and similar projects. Please find attached a letter from FGM outlining the services included in their fee and comparison to other projects.

Attachments (*please list*)**:**

AIA Document B103-2007 * AIA Document A201-2007 * FGM Architects Letter dated 01/13/2017

Recommendation/Suggested Action (*briefly explain*)**:**

Recommendation to award the Contract for Professional Architectural Services for the Police Facility to FGM Architects.

DRAFT

AIA® Document B103™ – 2007

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

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

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

« City of St. Charles »
« Two East Main Street »
« St. Charles, IL 60174 »
« »« »

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

« FGM Architects »
« 1211 West 22nd Street, Suite 700 »
« Oak Brook, IL 60523 »
« »« »

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

«16-2234.01 St. Charles New Police Station»
« »
« »

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.

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

DRAFT

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable, "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.1.1 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

« The initial program was developed as part of a study prepared by FGM Architects titled "St. Charles Police Department Facility Study" dated May 26, 2016 »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

« The project is for a police station approximately 50,300 s.f. in size »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

« The Owner's initial construction budget for the project is $16,745,006 - $17,341,135 »

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

« The project is anticipated to begin in March of 2017 and the project will be competitively bid in the fall of 2017 or Winter 2018 »

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.2 Commencement of construction:

« Winter/Spring 2018 »

.3 Substantial Completion date or milestone dates:

« Spring/Summer 2019 »

.4 Other:

« »

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

« Construction Management as Constructor (at Risk) »

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

« The project is not anticipated to include multiple bid packages or be fast-track scheduled »

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

« »

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

« Mr. Peter Suhr »
« Director of Public Works »
« City of St. Charles »
« Two East Main Street »
« St. Charles, IL 60174 »« »

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

« Police Chief James Keegan, St. Charles Police Department, 211 North Riverside, St Charles, IL 60174-1984 »

§ 1.1.10 The Owner will retain the following consultants and contractors:
(List name, address and other information.)

.1 Construction Manager:

« »« »« »« »« »« »

.2 Geotechnical Engineer:

« »« »« »« »« »« »

.3 Other, if any:
(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

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« »

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

« Raymond Lee »
« FGM Architects »
« 1211 West 22nd Street, Suite 700 »
« Oak Brook »
« Illinois, 60523 »« »

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
(List name, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

« McCluskey Engineering »
« 1887 High Grove Lane »
« Naperville, Illinois 60540 »« »« »« »

.2 Mechanical, Electrical, Plumbing and Fire Protection Engineer:

« Consolidated Consulting Engineers »
« 212 S. Milwaukee Avenue »
« Wheeling, Illinois 60090 »« »« »« »

.3 Civil Engineer:

« Webster, McGrath & Ahlberg »
« 207 South Naperville Road »
« Wheaton, IL 60187 »« »« »« »

.4 Landscape Architect:

« Studio Bloom »
« 1807 S. Washington Street, Suite 110 »
« Naperville, IL 60563 »« »« »« »

.5 Security Consultant:

« Correct Electronics »
« 115 East Ogden Avenue, Suite 110, PMB 386 »
« Naperville, IL 60565-2050 »« »« »« »

.6 Commissioning Consultant (Code Required Commissioning):

« Primera Engineers »
« 100 S. Wacker Drive, #700 »
« Chicago, IL 60606 »« »« »« »

§ 1.1.12.2 Consultants retained under Additional Services:

« »

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

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 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.

§ 2.5.1 Comprehensive General Liability with policy limits of not less than One Million Dollars » ($ «1,000,000.00 ») for each occurrence and Two Million dollars ($2,000,000.00) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than «One Million Dollars » ($ «1,000,000.00 ») combined single limit and aggregate for bodily injury and property damage.

§ 2.5.3 The Architect may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than «Five Hundred Thousand Dollars » ($ «500,000.00 »).

§ 2.5.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than «Two Million Dollars » ($ «2,000,000.00 ») per claim and Three Million Dollars ($3,000,000.00) in the aggregate.

§ 2.5.6 The Architect shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

§ 2.5.7 Owner and Architect acknowledge that construction documents prepared by the Architect may contain errors or omissions. Architect and/or Architect's consultants included within Architect's basic services will provide required additional design services related to errors or omissions at no cost to Owner.

§ 2.5.8 If as a result of Architect's negligence, an error in the Construction Documents results in additional construction costs, the Architect shall be responsible for paying those additional construction costs for which Architect is responsible as damages as determined on the basis of applicable contractual obligations and professional liability standards.

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§ 2.5.9 If a required item or component of the Project is omitted from the Architect's Construction Documents, the Owner shall be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original Construction Documents. If the omission was due to the Architect's negligence, the Architect will be responsible for any additional costs related to the rework of previously installed or completed construction to allow for the installation of the omitted component.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information, but Architect assumes no duty to discover such errors, omissions or inconsistencies..

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner and the Scheduling Consultant a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

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

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 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 use professional care to respond to applicable written publicly available design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.1.9 If the Architect's services involve assisting the Owner in making changes to an existing facility, the Owner shall furnish documentation and information on the facility upon which the Architect may rely for their accuracy and completeness. Unless specifically authorized or confirmed in writing by the Owner, the Architect shall not be required to perform or to have others perform destructive testing or to investigate concealed or unknown conditions. In the event documentation or information furnished by the Owner is inaccurate or incomplete, all resulting damages, losses and expenses, including the cost of the Architect's Additional Services, shall be borne by the Owner. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect, its consultants and employees of any of them from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, which arise out of or result from the documentation or information furnished by the Owner.

§ 3.1.10 Verification of existing conditions. If this Project involves remodeling and/or rehabilitation of an existing structure, certain assumptions regarding existing conditions are required to be made. Since some of these

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assumptions may not be verifiable within Owner's budget or without destroying otherwise adequate or serviceable portions of the building, the Owner agrees that, except for specific tasks identified for Architect to perform under Agreement, to the fullest extent permitted by law, the Owner will defend, indemnify and hold harmless the Architect, its consultants and the employees of any of them from and against all claims arising out of or resulting from unforeseen conditions.

§ 3.1.11 The LEED Green Building Rating System and other similar environmental guidelines (collectively "LEED Guidelines") utilize certain design and usability recommendations on a project in order to promote an environmental friendly and energy efficient facility. While the Architect shall interpret and use these LEED Guidelines with professional care when LEED Guidelines are agreed by Owner to be applied to the Project, the Owner acknowledges and understands that LEED Guidelines are subject to various and possibly contradictory interpretations. Furthermore, compliance may involve factors beyond the control of the Architect including, but not limited to, the Owners' use and operation of the completed Project. The Architect does not warrant or represent that the Project will actually achieve LEED certification or that the energy savings and cost estimates relating to building or equipment operation will be the actual operational energy use or cost. Likewise, the Architect shall not be responsible for any environmental or energy shortcomings arising out of the Owner's use and operation of the completed 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, and assist the Construction Manager in developing the budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of perspective sketches, or digital 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 schedule and budget for the Cost of the Work.

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

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

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Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, 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 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Construction Manager's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 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 use professional care to 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 and the Construction Manager 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 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Owner and Construction Manager to review the Construction Documents.

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

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES
§ 3.5.1 GENERAL

The Architect shall assist the Owner and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining either competitive bids or negotiated proposals; (2) Assisting the Owner and

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Construction Manager in confirming responsiveness of bids or proposals; (3) Assisting the Owner and Construction Manager in determining the successful bid or proposal, if any; and, (4) Assisting the Owner and Construction Manager in awarding 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 and Construction Manager in bidding the Project by

- **.1** providing an electronic copy of Bidding Documents to the Construction Manager for distribution to prospective bidders,
- **.2** participating in a pre-bid conference for prospective bidders, and
- **.3** preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare addenda identifying approved substitutions for distribution by Construction Manager 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 and Construction Manager in obtaining proposals by

- **.1** providing an electronic copy of Proposal Documents for distribution to prospective contractors, and ;
- **.2** participating in selection interviews with prospective contractors; and
- **.3** participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare addenda identifying approved substitutions for distribution by Construction Manager 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 to the extent consistent with this Agreement. 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 to adopt such modifications.

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

§ 3.6.1.3 Subject to Section 4.3, 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.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at on a weekly basis 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.

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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, and (2) defects and deficiencies observed in the Work.

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

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

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

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents. In no event shall Architect be liable for decisions made in such capacity if made in good faith.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule if and when issued by the Construction Manager 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

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adequate review. For standard product selections, color selections, LEED submittals (as applicable) and simple shop drawings (defined as less than three (3) pages) the Architect and its consultants shall have fifteen (15) working days for review of such materials. For complex shop drawings (totaling more than three (3) pages in size, examples being structural steel or mechanical layout shop drawings) the Architect and its consultants shall have twenty (20) working days for review for such material.

§ 3.6.4.2 The Architect shall review and approve or take other appropriate action only upon the Contractor's submittals that are required by the Contract Documents such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for general 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 specific details, equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Regardless of the actions, responses, reviews, approvals, notations, or mark-ups of the Architect on any submittal, shop drawing or product data, neither Architect nor its consultants shall be responsible for any aspect of the construction submittals which do not comply with the requirements of the Contract Documents, which responsibility rests solely with the Contractor.

§ 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 or its consultants shall specify the appropriate performance and design criteria that such services must satisfy. Subject to the terms of Section 3.6.4.2, the Architect or its consultants 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 and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals and shall not be responsible for any acts, errors or omissions in the services or documentation provided by the Contractor's design professional.

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

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work under Section 3.6.5.1.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct site reviews 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 on site review indicating the Work complies with the requirements of the Contract Documents.

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§ 3.6.6.2 The Architect's reviews shall be conducted with the Owner to check apparent conformance of the Work with the requirements of the Contract Documents and to verify the apparent 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, if requested, to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically authorized by the Owner. The Owner shall compensate the Architect as provided in Section 11.2.

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	LEED® Certification (B214™–2007)	Architect	Fee is stated in Article 11.2
§ 4.1.2	Furniture, Furnishings, and Equipment Design	Architect	Fee is stated in Article 11.2
§ 4.1.3	Topographic Survey	Owner	

§ 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.

« »

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

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

- **.1** Services necessitated by a 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, or bid packages in addition to those listed in Section 1.1.6;
- **.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;

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.7 Preparation for, and attendance at, an abnormal number of public presentations, meetings or hearings;
.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.
.12 Documentation, data collection, preparation for and attendance at meetings and similar services necessitated by the inclusion of a provision for liquidated damages in the Owner/Contractor Agreement.
.3 Services related to permitting in excess of 40 hours.

§ 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 beyond the services performed:

.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 submittals of the Contractor
.2 «One per week » («1/wk ») visits to the site by the Architect over the duration of the Project during construction
.3 «Two » («2 ») on site reviews for any portion of the Work to determine whether such portion of the Work appears substantially complete in accordance with the requirements of the Contract Documents
.4 «Two » («2 ») on site reviews for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within « Thirty » (« 30 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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.

§ 5.3 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-, including design changes necessitated by unforeseen conditions, or a reasonable

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number of conflicts, errors or inconsistencies in the Contract Documents within industry standards. The Owner shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs and not hold Architect responsible for such costs.

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

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and 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.

§ 5.6 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.

§ 5.7 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 and other liability insurance as appropriate to the services provided.

§ 5.8 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.

§ 5.9 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.

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

§ 5.11 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.

§ 5.12 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.

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

§ 5.14 The Owner shall contract separately for the consulting services in this Article 5 and as listed in Section 1.1.12.1. Unless otherwise indicated, those services shall be performed by licensed professionals, who shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and Owner's consultants shall require the consultants to coordinate their drawings and other Instruments of Service with those of the Architect and to advise the Architect of any potential conflict. The Architect shall have no responsibility for the components of the Project designed by the Owner's consultants or the adequacy of their Instruments of Service. Review by the Architect of the consultant's drawings and other Instruments of Service is solely for consistency with the Architect's design concept of the Project. The Architect shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by those consultants in connection with such documents and services, and shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect, its consultants and the employees of any of them from all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of the services performed by the other consultants of the Owner even if Owner contends Architect, its consultants or the employees of any of them should have discovered the error or omission of Owner's consultants.

§ 5.15 If the Owner authorizes deviations, recorded or unrecorded, from the documents prepared by the Architect without written agreement of the Architect, to the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect, its consultants and the employees of any of them from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from such deviations.

§ 5.16 Owner shall include in the contracts of all contractors Sections 3.5 and 3.18 of AIA A-201 General Conditions of the Contract for Construction (2007) Edition.

§ 5.17 Owner shall include in the contracts of all contractors provisions stating that the contractor warrants and guarantees to Owner and Architect that the Work will be performed by all workers at the site in a safe and careful manner without injury or death to any such worker and in full compliance with the provisions of all safety statutes, ordinances, laws, rules and regulations, including but not limited to, the Occupational Safety and Health Act.

§ 5.18 Owner shall include in the contracts of all contractors the requirement that the contractors name Owner and Architect as additional insureds on all insurance required by the contractors for the Project

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 Construction Manager's 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. Cost of the Work shall include an Owner's contingency in the amount of 3% of the construction budget to cover ambiguities, inconsistencies, incompleteness, errors or omissions in the drawings, specifications or other design documentation furnished by the Architect.

§ 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 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

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

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any material inaccuracies and inconsistencies noted during any such review, but in no event shall the Architect be liable if the bids or Cost of the Work exceeds the estimate or the Owner's budget.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

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

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

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

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

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, 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, or Architect is terminated without cause as provided in Section 9.5, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to 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.

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

§ 7.5 When the Architect provides to the Owner any Instruments of Service in electronic form, the following shall apply:

§7.5.1 The submitted data files are intended to work only as described in the Agreement. These files are compatible only on AutoCAD 2016 or Revit Architecture 2016 or later releases. (Owner shall verify drawing release number and file format with Architect at the time files are transmitted.) The Architect makes no warranty as to the compatibility of these files and only agrees to the representations herein of the specified release of the above stated software. The Architect cannot be held responsible for uses of the data outside of or beyond the scope of the Agreement.

§ 7.5.2 The information of the electronic media is not considered part of the Architect's Instrument of Service. The Instruments of Service shall be the sealed Drawings and Specifications prepared by the Architect. The information contained on the electronic media shall not be used on other projects, for additions to the Project or for completion of this Project by another design professional without written consent from the Architect. Any such use or reuse by the Owner or others without written consent by the Architect for the specific purpose intended will be at the Owner's sole risk and without liability or legal exposure to the Architect. Furthermore, the Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect from all claims arising out of or resulting from Owner's violation of any of the terms of this Section 7.5.2. Any such consent or adaptation will entitle the Architect to further compensation at rates to be mutually agreed upon by the Owner and the Architect.

§ 7.5.3 The Architect will not be held responsible to maintain copies of the electronic files for more than one (1) year after acceptance of the Project.

§ 7.5.4 The electronic files are submitted to the Owner for a 30-day acceptance period. Because data stored on electronic media can deteriorate undetected or be modified without the Architect's knowledge, the Owner agrees that the Architect cannot be held liable for the completeness or correctness of the electronic data after an acceptance period of 30 days from delivery of the electronic files. During this period, the Owner may review and examine these files and any errors detected during this time will be corrected, as part of this Agreement. Any change requested after the acceptance period will be considered Additional Services to be performed on a time and material basis, at the Architect's standard rates plus based on the terms and conditions herein. No software is to be transferred to Owner and in all instances, the Owner's right to use computer data or files or to use Drawings, Specifications or other Instruments of Service prepared by Architect is conditioned on the Owner not being in default under this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

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

§ 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.

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§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement and only for their relative percentage degree of fault. The Architect's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage. As a condition of Architect's obligation to indemnify, Owner shall provide prompt written notice of the claim for which indemnification is sought and afford Architect the option to assume defense of the Owner, which Architect may elect or decline in its sole discretion.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement or the services provided. 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.

§ 8.1.5 This contract is governed by the State of Illinois and that exclusive jurisdiction for all matters relating to the contract lies with the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

§ 8.2 MEDIATION

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

§ 8.2.2 Prior to instituting mediation, on written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representative and shall meet within five (5) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties themselves be unable to agree on a resolution of the dispute within such ten (10) days, the parties may proceed to mediation. The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[« »]Arbitration pursuant to Section 8.3 of this Agreement

[«X»] Litigation in Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois

[« »] Other *(Specify)*

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ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the 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 upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.6 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 all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 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. In no event shall Architect be liable for any errors or omissions in the Instruments of Service if Owner is rightfully terminated under Sections 9.1, 9.3 or 9.4, or Architect is terminated under Section 9.5.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 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.

§ 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

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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. If the Architect or the Architect's consultants at their option agree in writing to perform services related to hazardous materials, to the fullest extent permitted by laws, the Owner agrees to defend, indemnify and hold harmless the Architect, its consultants and the employees of any of them from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of services by the Architect, its consultants or the employees of any of them related to such services, except where such liability arises from the sole negligence or willful misconduct of the person or entity seeking indemnification.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

8.0% of the Project's estimated Cost of the Work as defined in Section 6.1. At Owner's option, fee may be converted to a lump sum at the conclusion of the Design Development Phase based on the estimated Cost of the Work, the scope of work defined at that time, and by mutual agreement of the Owner and Architect. After conversion to a lump sum fee, any changes to the scope of work may require adjustment of both the Architects services and associated fees.

§ 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.)

Furniture Design and Procurement Services – Lump Sum Fee of $56,400

LEED (Leadership in Energy and Environmental Design) and Sustainable Design Services: 1% of the Projects estimated Cost of the Work. LEED design services includes registration fees, energy modeling, and enhanced commissioning.

§ 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.)

« »

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§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus 10 percent (10%) or as otherwise stated below:

« At an hourly rate or lump sum fee as approved by the 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	«fifteen »	percent (	«15 »	%)
Design Development Phase	«twenty-five »	percent (	«25 »	%)
Construction Documents Phase	«thirty-five »	percent (	«35 »	%)
Bidding or Negotiation Phase	«five »	percent (	«5 »	%)
Construction Phase	«twenty »	percent (	«20 »	%)
Total Basic Compensation	one hundred	percent (	100	%)

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

§ 11.6 When compensation 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. The rates shall be adjusted periodically in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« Per Hourly Rate Schedule which is attached hereto and incorporated herein as Exhibit A »

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:

.1 Transportation and authorized out-of-town travel and subsistence;
.2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
.3 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 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;

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.9 All taxes levied on professional services and on reimbursable expenses;
.10 Site office expenses; and
.11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent (10%)of the expenses incurred.

§ 11.9 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:

« »

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of « zero » ($ « 0 ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid «sixty » («60 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

«In accordance with the Illinois Local Government Prompt Payment Act
»« »

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

« »

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:
.1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect
.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

.3 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

« Exhibit A – Hourly Rate Schedule »

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

OWNER – City of St. Charles	**ARCHITECT – FGM Architects**
(Signature)	*(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*
	(Signature)
	« »« »
	(Printed name and title)

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General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
«16-2234.01 St. Charles New Police Station»
« »

THE OWNER:
(Name and address)
« City of St. Charles »
« Two East Main Street »
« St. Charles, IL 60174 »

THE ARCHITECT:
(Name and address)
« FGM Architects »
« 1211 West 22nd Street, Suite 700 »
« Oak Brook, IL 60523 »

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General Conditions of the Contract for Construction

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, any certifications required by the bid documents, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means all of the Contractor's obligations under the Contract Documents, including the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 CONTRACTOR

The term "Contractor" as used herein means the General Contractor or the Construction Manager at risk retained by the Owner.

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§ 1.1.10 PROJECT MANUAL
The Project Manual is a volume assembled for the Work that includes, but is not limited to the Contract Documents and all Exhibits thereto.

§ 1.1.11 PROVIDE
When the word "provide", including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the specifications and related Contract Documents.

§ 1.1.12 SURETY
The surety is any firm or corporation that has executed as surety the Contractor's Performance Bond and Payment Bond guaranteeing the performance of the Contract.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor and items which are reasonable inferable therefrom. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. The use of the singular or plural, or the use of a male or female pronoun, is solely for the purpose of convenience and the Contract Documents shall be read to include the male and female, and the plural where such meaning is appropriate.

§ 1.2.4 In the event of discrepancies or conflicts among or between the Contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work. If the Contractor fails to request such an interpretation from the Architect, it is presumed that the more stringent, better quality or higher quantity requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum or GMP.

§ 1.3 CAPITALIZATION
Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION
In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties 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, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; or (2) a change in the Work materially increases the Contract Sum; and (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents or by law, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor shall provide information or other assistance as the Architect or Owner may request in connection with obtaining permits.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, geotechnical data, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner unless the Contractor knows of any error, omission or discrepancy in such information, in which case the Contractor shall promptly report same in writing to the Owner and Architect. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Subcontractors and Vendors shall obtain their copies from the General Contractor from his allotment.

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§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or approved construction schedules, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses (including attorneys' fees and consequential or incidental expenses) and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 2.5 OWNER'S RIGHT TO AUDIT

§2.5.1 The Contractor shall keep full and accurate records of all labor and material costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after Final Payment. In addition, the Contractor shall include a provision in all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work and that such records shall be open to audit by the Owner or its authorized representatives during performance of the Work and until three years after each Subcontractor's final completion.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed , correlated personal observations with requirements of the Contract Documents, and has satisfied itself as to the nature and location of the work, the general and local conditions, including those bearing upon access (including partial or total restriction in access), transportation, disposal, staging, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of existing conditions to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the work and all other matters which can in any way effect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve the Contractor from any obligations to comply with the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing

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conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 In all cases of interconnection of the Work with existing facilities, Contractor shall field measure and verify at the site all dimensions relating to such existing facilities. Any conflicts in the Work and the existing facilities which could have been mitigated by the Contractor's obligation to verify the dimensions of the existing facilities shall be promptly rectified by the Contractor at its own expense.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety, good construction practices to accomplish the installation, including manufacturer's installation procedures, and warranty implications, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe or in accordance with good construction practice or affects the warranties, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. If for any reason Work in place does not comply with the Contract Documents, the Contractor shall immediately correct the Work before proceeding with subsequent Work.

§ 3.3.4 The Contractor shall coordinate inspections by governmental authorities having jurisdiction over the Work.

§3.3.5 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

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§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require employees for whom it is responsible working at the jobsite to participate in a mandatory drug testing program to the extent permitted in union agreements administered by the Contractor and required by the Owner. The costs for drug testing, reports and other related costs are the responsibility of the Contractor.

§ 3.4.4 The Contractor shall only employ labor on the Project or in connection with the Work capable or working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall or shall not be included in the Work of any particular trade.

§ 3.5 WARRANTY

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The Contractor's warranty will not be restricted by the limitations of any manufacturer or subcontractor warranty nor shall the warranty be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedure and advises the Architect in writing of possible substitute products or procedures which will not affect the warranty. Work, materials or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

§ 3.5.2 Inability or refusal of the Subcontractor or supplier responsible for the defective Work to correct such Work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty shall be in effect as set forth in Articles 9 and 12 herein. This warranty does not limit any other rights or remedies of the Owner or Architect.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations governing the design of the Project. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly

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notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Change Order.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear any penalties assessed and the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly, within 24 hours, provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- **.1** Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- **.2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- **.3** Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner and reviewed by the Architect with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's Project Manager and superintendent may not be removed from the Project by the Contractor, absent death, disability or termination of employment without Owner's written approval.

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§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Updated schedules do not constitute an amendment of the Contract Time set forth in the Contract Documents. The Contract Time shall be amended only by written Change Order. Failure of the Owner or Architect to object to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those time limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, failure of the Owner or the Architect to object to the Contractor's schedule showing performance in advance of such time limits shall not create or imply any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform and complete the Work in general accordance with the most recent approved schedules submitted to the Owner and Architect. Should the Contractor fail to adhere to the approved construction schedule(s), the Contractor shall immediately, at its own expense, take such measures, at its own expense, so as to fully correct such failure, including addition of personnel and/or equipment, overtime, and/or additional shifts. The Owner shall be entitled to rely on Contractor's schedules for coordination of its own activities, as well as the activities of other contractors working at the Project site or on the Project.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals (all collectively referred to herein as "Record Documents"). These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§3.11.1 Plans and sections of all concealed work, particularly concealed piping and conduit, and deviations from conditions shown on the Contract Drawings, shall be shown and dimensioned on the "Record Documents". Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§3.11.2 The Contractor will make the Record Documents available for inspection by the Architect upon reasonable notice. Adequate maintenance of the Record Documents shall be a prerequisite to certification of the Contractor's application for payment.

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§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. For standard product selections, color selections, and simple shop drawings (defined as less than three (3) pages), the Architect and its consultants shall have fifteen (15) working days for review of such materials. For complex shop drawings (totaling more than three (3) pages in size), the Architect and its consultants shall have twenty (20) days for review of such material or such longer time as the Architect, in its professional judgment, deems necessary.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's review of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria

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that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and 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, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§3.12.11 After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of that specified in the Contract Documents will be considered only under one or more of the following conditions:

- **.1** Required for compliance with interpretation of code requirements or insurance regulations then existing.
- **.2** Unavailability of specified products, through no fault of the Contractor.
- **.3** Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- **.4** Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- **.5** When it is clearly seen, in the judgment of the Architect and with the Owner's approval that a substitution would be substantially to the Owner's best interests, in terms of cost, time or other considerations.

Substitution requests shall be written, timely, and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall provide all temporary protection necessary to ensure the safety of persons in or about the Project site.

§ 3.13.1 For Projects involving renovations or additions, the Contractor shall keep the building water tight at all times during the execution of the Work to the extent possible. The Contractor shall keep noise levels to a minimum, refrain from unreasonable interference with building personnel, maintain utilities in the building in proper working order at all times absent advance special coordination with Owner, and comply with special requirements of the Owner, it any.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about

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the Project. Throughout the progress of the Work, the Contractor shall continually remove from the Project Site and any adjacent property, waste, tools, equipment, storage facilities, machinery, trailers, vehicles and surplus materials no longer required for the diligent prosecution of the Work, so as to maintain as orderly and contained a Work Site as reasonably possible at such state of the Work.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor waives any right of contribution against and shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and their directors, officers, members, agents and employees (hereinafter "Indemnitees") of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, , caused by or arising from the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The purchase of insurance by the Contractor with respect to the obligations required in Article 3.18 shall in no event be construed as fulfillment or discharge of such obligations. The Contractor's indemnity obligation is in addition to, and cumulative of, any other obligations provided by law or contract, all of which are preserved to the Indemnitees without diminution.

§3.18.3 "Claims, damages, losses and expenses" as these words are used in this Contract shall be construed to include, but not be limited to (1) injury of damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs, etc. incurred by the party being indemnified or its employees, agents or consultants.

§3.18.4 Only to the extent prohibited by Illinois law the indemnification obligations of the Contractor under this Article 3.18 shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees, arising out of their own negligence.

§3.19 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among

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members of councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or Architect's authorized representation.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site as agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will 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. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts for Work completed in accordance with the Contract Documents.

§ 4.2.6 The Architect has authority to recommend to the Owner that the Owner reject Work that does not conform to the Contract Documents. Subject to Owner's written approval, whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, 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 nor shall the Architect be

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responsible for defects or deficiencies of the Contractor, its Subcontractors, or suppliers resulting from their failure to complete the Work in accordance with the Contract Documents.

§ 4.2.7 The Architect will review , or take other appropriate action upon, only upon the Contractor's submittals such as Shop Drawings, Product Data and Samples that are required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of specific details, equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Regardless of the review, notations, or mark-ups of the Architect on any submittal, shop drawing or product data, neither the Architect nor its consultants shall be responsible for any aspect of the submittal, shop drawing or product data which does not comply with the requirements of the Contract Documents, responsibility for which rests solely with the Contractor.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will 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 will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if reasonably inferable from the Contract Documents as being necessary to produce the intended results.

§ 4.2.14 When submitted in accordance with the Contract Documents, the Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. Requests for information which do not conform to the requirements of the Contract Documents, or whose answer is reasonably obtainable or inferable from the Contract Documents, may be returned by the Architect without action.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

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number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 All subcontracts shall be in writing and shall be assignable by the Contractor to the Owner upon termination for cause pursuant to the terms of the Contract Documents. All subcontracts shall contain a provision that the subcontract is intended to directly benefit the Owner and the Owner is a third party beneficiary of such subcontract. The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

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.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 The Owner may, without invalidating the Contract and without notice to the surety, direct changes in the Work. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- **.1** The change in the Work;
- **.2** The amount of any adjustment in the Contract Sum; and
- **.3** The extent of any adjustment in the Contract Time.

§ 7.2.2 No payment for Change in the Work shall be made until such Changes has been memorialized in an executed Change Order and the Change has been implemented into the Work. Partial payments on partially implemented changes shall be paid similarly as partial payment on base contract Work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- **.1** Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- **.2** Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- **.3** Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- **.4** Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- **.5** Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement or the Notice to Proceed authorizing the Contractor to commence Work.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. Unless provided elsewhere in the Contract Documents, Final Completion shall be completed within thirty (30) days following Substantial Completion.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 The Contractor shall not be entitled to an increase in the Contract Sum as a result of any delays in the progress of the work. The Contractor's sole remedy for delay shall be an extension of Contract Time. In no event shall any delays or extensions of time be construed as cause of justification for payment of extra compensation to the Contractor. Any claims for an increase of the Contract Time shall be made in writing to the Architect within seven (7) days of the event causing the delay.

§8.3.4 Extension of Contract Time resulting from Changes in the Work shall be by Change Order. Whenever the Contractor seeks an adjustment in the Contract Time as part of a Claim or Change Order, the Contractor shall justify the request with proper reference to the approved construction schedules and submitted updated schedules. All executed Change Orders shall be deemed to include adjustments in the Contract Time, if any, resulting from the underlying Change in the Work.

§8.4 If the Contractor, but for a delay not within its control, would have completed the Work prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

§8.5 The stated milestone schedule dates for commencement of the Work, Substantial Completion of the Work and Final Completion of the Work, are material inducements to Owner in entering into this Agreement, and all time limits stated in the Contract Documents are of the essence of this Agreement.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

The Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The Contractor shall prepare the schedule of values using actual bids or negotiated proposals for various components of the Work. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Approval of the schedule of values (and revisions thereto) by the Architect shall be an absolute prerequisite to certification of the Applications for Payment.

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§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. However, this paragraph will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the subcontract.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Stored materials may be included in the Applications for Payment provided the Architect can verify the cost and the existence of such stored materials. The Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. Applications for Payment for stored materials must meet the following criteria: 1) evidence of insurance is required for the stored materials; 2) the materials must be produced or stored for this Project only; and 3) the materials must be stored separately from other inventory and identified for this Project only.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Although title to the Work covered by partial payments made shall pass to the Owner, this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of the materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver of the right of the Owner to require the fulfillment of all terms of the Contract Documents. A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include properly executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of subcontractors and suppliers who were included in the immediate proceeding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the 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

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the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will 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) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective Work not remedied;
- **.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- **.3** failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- **.5** damage to the Owner or a separate contractor;
- **.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- **.7** repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§9.5.4 At the election of the Owner, in addition to the Owner's remedy described in Subparagraph 9.5.1 above, a sufficient sum may be retained by the Owner as determined to be necessary for the purpose of setting aside a reasonable reserve to fully correct the loss or to protect the Owner from the loss for the items above set forth.

§9.5.5 The Contractor shall submit lien waivers and sworn statements in accordance with the terms of the Contract Documents. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner not later than the time of payment. The Contractor shall keep the Project free and clear of all liens which arise from the Work. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certifications of Payment have been previously issued and payments made by the Owner, will be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, its subcontractors, material supplies, or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work. To the extent of payments made by Owner, the Contractor shall appear, defend, indemnify and hold harmless the Owner and Indemnitees, at Contractor's sole expense, against any and all costs resulting from liens, claims, actions, law suits or proceedings brought against Owner or its property filed in connection with the Work, the Project site or any improvements thereon. To the extent of payment made by Owner, the Contractor

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agrees to appear, defend, indemnify and hold harmless the Owner and Indemnitees against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits or proceedings.

§9.5.6 The Owner shall release any payments withheld due to a lien if the Contractor obtains security acceptable to the Owner or a lien bond which is 1) issued by a surety acceptable to the Owner, 2) in form and substance satisfactory to the Owner, and 3) in an amount not less than one hundred fifty percent (150%) of such lien claim or such other amount as may be reasonably required by the Escrow Agent, if any, to insure over such lien claim. By posting a lien bond or other acceptable security, the Contractor shall not be relieved of any responsibilities or obligations under this Section, including without limitation, the duty to defend, appear, indemnify and hold harmless Owner and Indemnitees. The Cost of any premiums incurred in connection with such lien bond and security shall be the responsibility of the Contractor and shall not be reimbursable to the Contractor as a Cost of the Work or otherwise.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Notwithstanding Article 4.2.4, the Architect and Subcontractor may communicate directly on the matters covered by this paragraph.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§9.6.8 The Owner will withhold ten percent (10%) from the periodic Progress Payments as retention. Payment of retention shall be requested with the Contractor's application for Final payment. No interest shall accrue on monies held in retention.

§ 9.7 INTENTIONALLY DELETED § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of the Owner's

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personnel in the operation of systems has been completed and documents, and all final finishes within the Contract Documents are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) calendar days or within the time stated elsewhere in the Contract Documents following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work may be as mutually acceptable to the Owner and the Contractor. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-Subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any tier.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list ("Punch List") of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion or as set forth in Article 12 for Punch List items and warranty work.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.8.6 Among other items identified elsewhere in the Contract Documents, submission of the following shall be a prerequisite to Substantial Completion:

- **.1** All Record Documents
- **.2** All Operations and Maintenance Manuals, if any
- **.3** All manufacturers' warranties, if any
- **.4** Complete commissioning of all systems required by the Contract Documents to be commissioned.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 All Work shown on the Contractor's Punch List and thereafter identified in the Architect's inspection shall be completed within thirty (30) days of issuance of the Certificate of Substantial Completion, unless a different time is stated elsewhere in the Contract Documents. Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, based upon the exercise of professional skill and care and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Neither the Owner nor the Architect shall be responsible for any safety precautions or programs in connection with the Work.

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§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- **.1** employees on the Work and other persons who may be affected thereby;
- **.2** the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or

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who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Intentionally Deleted
§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES
§ 10.4.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS
§ 11.0 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable as set forth in the Agreement and in the attached Rider to the General Conditions, which Rider is attached hereto as Article 11 as is fully set forth herein:

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 UNCOVERING OF WORK
§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost

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of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall commence to run with respect to portions of Work first performed or corrected after Substantial Completion at the time of the subsequent acceptance of this Work in writing by the Owner.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor except has set forth in Article 12.2.2.2 herein.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Illinois and that exclusive jurisdiction for all matters relating to the contract lies with the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois.

§13.1.1 HUMAN RIGHTS ACT

In addition to the certifications, if any, required by the Owner and to the extent required by law, the Contractor shall comply with the terms and procedures of the Illinois Human Rights Act, 775 ILCS 10/0.01 *et.seq.* To the extent required by law, the Contractor agrees as follows:

.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service, and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.

.2 That, if it hires employees in order to perform this Contract or any portion thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in

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the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.

.3 That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

.4 That is will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Department and the Contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

.5 That it will submit reports as required by the Department's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Department or the Contracting agency, and in all respects comply with the Illinois Human Rights Act and the Department's Rules and Regulations.

.6 That it will permit access to all relevant books, records, accounts and Work sites by personnel of the Contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules and Regulations.

.7 That it will include verbatim or by reference the provisions of this clause in every Subcontract it awards under which any portion of the contract obligations are undertaken or assumed, so that such provisions will be binding upon such Subcontract. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such Subcontractors; and further it will promptly notify the Contracting Agency and the Department in the event any Subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any Subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contracts or Subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

§13.1.2 DEBARMENT The Contractor by submitting its bid certifies that the Contractor is not barred from bidding on the Project as a result of a conviction for either bid-rigging or bid rotating. 720 ILCS 5/33/E-11.

§13.1.3 DRUG FREE WORKPLACE The Contractor by submitting its bid certifies that it will provide a drug free workplace and that it is in compliance with the requirements of the Drug Free Workplace Act. 30 ILCS 580. 1 *et seq*.

§13.1.4 SEXUAL HARASSMENT The Contractor by submitting its bid certifies that it has a written sexual harassment policy which includes (i) the illegality of sexual harassment; (ii) a definition of sexual harassment (iii) a description of sexual harassment, utilizing examples; (iv) an internal complaint process including penalties; (v) the legal recourse, investigative and compliant process through the Illinois Department of Human Rights; (vi) directions on how to contact the Department and Commission; and (vii) protection against retaliation for exercising rights under the policy in accordance with 775 ILCS 5/1 – 15.1.1 The Owner, and other parties to this Contract, are subject to the rules and regulations of the Illinois Department of Human Rights and the statutory requirements thereof.

§13.1.5 ILLINOIS DEPARTMENT OF LABOR REQUIREMENTS

§13.1.5.1 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workmen, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

§13.1.5.2 The Contractor and Subcontractors shall comply with *the Illinois Prevailing Wage Act* (11 Re. Stat. Ch. 48, Sections 39S-1-12) and shall include in Bids the costs for the current prevailing wage. As changes are made in these prevailing wages, the Contractor and Subcontractors performing Work on the Project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements

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are the obligation of the Contractor and Subcontractors. Certified payrolls must be submitted to the Owner pursuant to Illinois law.

§13.1.5.3 To the extent that there are any violations of this Act and any demands are made upon the Owner, Architect, or Construction Manager by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing Work on the Project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner and Architect free and harmless from all costs, liability or damages incurred, directly or indirectly, by the Owner or Architect including attorneys' fees, in responding to and complying with demands made by the Department of Labor or an aggrieved employee and such amounts may be withheld from the payments to be made on the Project. It is the intention that the Owner, Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§13.1.5.4 No less than once per month, the Contractor shall submit certified payments to the Owner in compliance with the Illinois Prevailing Wage Act.

§13.1.6 ILLINOIS DRUG-FREE WORKPLACE ACT Upon request Contractor shall execute a Certification in compliance with the City of St. Charles as submitted by the Owner to the Contractor.

§13.1.7 MISCELLANEOUS PROVISION OF LAW. It is specifically provided that this Contract is subject to all the provisions of law regulating and controlling the performance of Work for the Owner, and that the rules of law shall prevail over any provision contained in any of the Contract Documents which may be in conflict thereto or inconsistent therewith. Each and every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if, through mistake or otherwise, such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

§13.1.9. The Owner may at its sole and exclusive option, invoke the following:

.1 Upon request by the Owner, any employee of the Contractor or any of its subcontractors or vendors shall submit state-issued identification documents (e.g. driver's license, state identification card, etc.) or other documents to the Owner so that the Owner may obtain a criminal background check of the employee. No employee who fails or refuses to produce such documents may work on the Project at the Project site. Alternatively, the Owner reserves the right to direct the Contractor, at any time during the Project, to immediately obtain criminal background investigations of any of Contractor's or Subcontractor's employees to ascertain whether such employees have been convicted of any offenses. If objectionable information regarding any employee is discovered via the background check, whether performed by Owner or Contractor, such employee shall not be allowed to work on the Project at the Project site. If no objectionable information is revealed, then the employee shall receive a visitor's badge that must be worn at all times while working on the Project site. The Owner shall be the sole judge of what information may be deemed objectionable. The Owner may request new background checks of any employee at any time.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Notwithstanding any of the provisions of this paragraph, however, the Owner may assign the Contract to an affiliated entity without the consent of the Contractor.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

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§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments shall be made in accordance with the Local Government Prompt Payment Act and interest, to the extent permitted under said Act, shall accrue at the rate set forth in the provisions of the applicable state of local statues governing payment to Contractors on public projects. On privately funded projects, interest shall only accrue as set forth in the Contract Documents. Under no circumstances shall interest accrue on amounts held in retention until such time as retainage is due under the Contract, and once due under the Contract, interest shall be as prescribed under herein referenced statutes.

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§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

§13.8 ARCHITECTS ADDITIONAL COMPENSATION
§13.8.1 The Contractor shall compensate the Owner for Additional Services for time expended by the Architect for contract administration time, at the Architect's hourly rate of the individual providing the service for the following:

- **.1** After two (2) reviews of shop drawings/submittals per item.
- **.2** Any office or field time spent after the second Punch List (excluding project closeout procedures).
- **.3** Any office or field time spent should project closeout extend more than thirty (30) days beyond Substantial Completion.
- **.5** Any office or field time necessitated by the Contractor's failure to achieve the scheduled date of Substantial Completion.

§13.8.1.1 The amounts paid to the Architect will be deducted by the Owner from the amounts due the Contractor for these Additional Services by change order and paid directly to the Architect.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- **.3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit earned to date and direct costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE
§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

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.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of subcontracts pursuant to Section 5.4; and

.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 If suspension, delay or interruption by the Owner constitutes more than 20 percent of the total number of days scheduled for completion, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.3.3 Any adjustment made in the Contract Sum pursuant to paragraph 14.3.2 shall be subject to the provisions of Article 7.3.6. Overhead shall be allowed to the extent of one-half the percentages set forth in Article 7.5.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Termination under this Article 14.1 shall be by written notice of termination delivered to the Contractor specifying the effective date of termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and direct costs incurred by reason of such termination, such as reasonable cancellation restocking charges associated with materials purchased for the Project.

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties to the Contract seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, whether or not any impact on cost or time has been determined.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§15.1.5.3 The criteria on which the term "weather delays" shall be based on the normal average amount of precipitation received in the project areas, as recorded over a period of the last five (5) years by NOAA, National Climatic Data Center. Any extension of time due to unusually severe weather must be requested by the Contractor on the basis of documented records of the actual precipitation for a minimum period of three (3) months' time, compared with the normal average for the area. The criteria shall also include the number of excessive precipitation days over the same period and whether or not the Contractor's force worked on said days or any stage of construction was affected.

§15.1.5.4 Delay caused by any Subcontractor shall be the responsibility of the Contractor. The Contractor shall, therefore, ensure that all Subcontractors provide at all times sufficient personnel, equipment and materials to substantially complete the Work in the time specified herein.

§15.1.5.5 Where a delay occurs which is beyond the Contractor's control, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

§ 15.1.5.6 Additionally, the Contractor shall not be entitled to payment or compensation for any alleged damages, costs or expenses whatsoever, including but not limited to costs of acceleration, arising in any manner because of hindrance or delay, from any cause whatsoever, whether such hindrances or delay be reasonable, foreseeable, avoidable or unavoidable.

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§15.1.5.7 The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay in the performance of the Work or any portion thereof for any reason, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- **.1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- **.2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§15.2.5.1 When the Architect is acting as the Initial Decision Maker, interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents. In no event, shall the

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Architect be liable for results of interpretation or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effects shall be final if consistent with the intent expressed in the Contract Documents.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5 and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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ARCHITECTURAL AND ENGINEERING FEES JANUARY 13, 2017

FGM's philosophy when providing fees is to include the services we believe the Owner requires to complete the project. Often, after receiving fees from several firms, Owners have told us that they were very confused by the wide range of fees submitted. It is extremely important that Owner's compare fees on an "apples to apples" basis.

For example, some architect's services (referred to as "basic services) include only the following:

- Architectural Design
- Mechanical Engineering
- Electrical Engineering
- Plumbing Engineering
- Fire Protection Engineering

Any other services an Owner may require would be an additional cost. Furthermore, some architectural firms only include services up to completion of the bidding and construction documents. The actual bidding and construction administration of the project is then an additional service.

With our extensive experience designing Police Stations, FGM's services includes the following for the *entire project duration*:

- Architectural Design
- Interior Design
- Landscape Design
- Furniture Design and Procurement (if required)
- Civil Engineering
- Mechanical Engineering
- Electrical Engineering
- Electrical Low Voltage Cable Design (data and voice)
- Plumbing Engineering
- Fire Protection Engineering
- Security Consulting
- Audio/Visual Consulting
- Commissioning

Fees are established based on your needs and we will provide to the City a competitive fee.

In addition, if desired, we can provide consulting services for items typically provided by an Owner such as telephone system design, IT Network/System Design, and move management.

FEE COMPARISONS

For the proposed contract, FGM has provided an initial fee based on a police station of approximately $15,500,000 in construction costs. At this time, we do not know the full scope of the project including where the project will be located. Once we know the full scope of the project, at a time mutually acceptable to both the City of St. Charles and FGM, we are willing to establish a fixed fee for the project.

FGM has proposed an initial fee of 8.0% of the cost of construction for full-service architectural and engineering services for the full duration of the project as defined above. The services FGM has included which are beyond the typical basic services amounts to nearly .80% of the cost of

construction, which makes FGM's basic service fee percentage 7.2% of the cost of construction. To illustrate FGM is providing a competitive fee, the following chart illustrates fees charged to other municipalities for similar projects. FGM has endeavored to provide an adjusted fee so an "apples to apples" comparison can be made.

Year Completed	Project Name	Construction Cost	Fee %	Adjusted Fee**	Notes
est. 2019	**St. Charles Police**	$15,200,000 - $15,800,000	8.00%		Project scope is not yet fully defined. Final Fee to be determined after site selection is completed and project scope is defined
est. 2017	**Edwardsville Police and Fire**	$ 11,950,000	7.50%	7.80%	Joint police and fire station making the overall project less complicated than only a police station. Did not include commissioning (.3%)
2015	**Bensenville Police**	$ 12,426,992	9.20%	8.30%	Building Conversion, FEMA 361 Storm Shelter design included, LEED Project-(added approximately .9% to fee)
2015	**New Lenox Police**	$ 11,575,740	7.30%	8.20%	Did not include civil engineering (.6%) or commissioning (.3%)
2013	**Franklin Park Police**	$ 13,514,751	8.50%	7.65%	Precast Concrete Building, LEED Project (added approximately .90% to fee), full service project
2012	**Palatine Police**	$ 22,000,000	7.40%	7.70%	Did not include commissioning (.3%)
2012	**Glendale Heights Police**	$ 9,916,500	7.60%	8.10%	Did not include civil engineering (.50%) or commissioning (.3%)
Notes:					
** Adjusted Fee is an attempt to show what the fee would be to provide a full-service project similar to what is proposed for the St. Charles Police Station.					

If there are services FGM has included within our fee assumption that the City does not require, or would prefer contracting directly for, FGM is very willing to discuss these items.