

---

---

**THE VILLAGE OF TINLEY PARK**

**Cook County, Illinois**

**Will County, Illinois**

---

---

**RESOLUTION**

**NO. 2018-R-022**

---

---

**A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT  
WITH FGM ARCHITECTS, INC., TO PERFORM CERTAIN ARCHITECTURAL  
SERVICES FOR FIRE STATION NO. 47 (FORMALLY NO. 2)  
IN THE VILLAGE OF TINLEY PARK**

---

---

**JACOB C. VANDENBERG, PRESIDENT  
KRISTIN A. THIRION, VILLAGE CLERK**

**MICHAEL J. PANNITTO  
BRIAN H. YOUNKER  
CYNTHIA A. BERG  
WILLIAM P. BRADY  
MICHAEL W. GLOTZ  
MICHAEL J. MANGIN  
Board of Trustees**

---

Published in pamphlet form by authority of the President and Board of Trustees of the Village of Tinley Park  
Peterson, Johnson, and Murray Chicago, LLC, Village Attorneys  
200 W. Adams, Suite 2125 Chicago, IL 60606

VILLAGE OF TINLEY PARK

Cook County, Illinois

Will County, Illinois

**RESOLUTION NO. 2018-R-022**

**A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT  
WITH FGM ARCHITECTS, INC., TO PERFORM CERTAIN ARCHITECTURAL  
SERVICES FOR FIRE STATION NO. 47 (FORMALLY NO. 2)  
IN THE VILLAGE OF TINLEY PARK**

WHEREAS, Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois provides that any municipality which has a population of more than 25,000 is a home rule unit, and the Village of Tinley Park, Cook and Will Counties, Illinois, with a population in excess of 25,000 is, therefore, a home rule unit and, pursuant to the provisions of said Section 6(a) of Article VII, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, the Village of Tinley Park ("Village"), pursuant to 50 ILCS 510/1 of the Illinois Municipal Code, is authorized to negotiate and enter into professional service agreements for architectural services based upon the demonstrated competence and qualifications for the type of services required at a fair and reasonable price (50 ILCS 510/1 *et al.*); and

WHEREAS, the Village has negotiated and desires to enter into a Professional Services Agreement ("Agreement") FGM Architects, Inc., to perform certain professional architectural services for the design of the new satellite first station to replace Fire Station No. 47 (formally No. 2) ("Fire Station"), attached hereto as Exhibit 1; and

WHEREAS, said Fire Station will be approximately 10,000 sq. ft., with a basement with three (3) apparatus bays; and

WHEREAS, said construction date shall begin in March 2019 with an approximately completion date of March 2020; and

WHEREAS, the Corporate Authorities of the Village of Tinley Park, Cook and Will Counties, Illinois, have determined that it is in the best interests of said Village of Tinley Park to enter into an Agreement with FGM Architects, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TINLEY PARK, COOK AND WILL COUNTIES, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, AS FOLLOWS:

SECTION 1: The foregoing recitals shall be and are hereby incorporated as findings of fact as if said recitals were fully set forth herein.

SECTION 2: That this President and Board of Trustees of the Village of Tinley Park hereby find that it is in the best interest of the Village of Tinley Park and its residents that the aforesaid "Professional Services Agreement," be entered into and that the Village President is hereby authorized to execute said Agreement on behalf of the Village, with said Agreement to be substantially in the form attached hereto and made a part hereof as Exhibit 1, subject to review and revisions as to form by the Village Attorney.

SECTION 3: Any policy, resolution or ordinance of the Village that conflicts with the provisions of this Resolution shall be and is hereby repealed to the extent of such conflict.

SECTION 4: This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED THIS 1<sup>st</sup> day of May 2018.

AYES: Younker, Pannitto, Berg, Brady, Glotz, Mangin

NAYS: None

ABSENT: None

APPROVED THIS 1<sup>st</sup> day of May 2018.

  
VILLAGE PRESIDENT

ATTEST:

  
VILLAGE CLERK

## **EXHIBIT 1**



# AIA® Document B101™ – 2007

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the First day of May in the year Two thousand eighteen  
(In words, indicate day, month and year.)

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

Village of Tinley Park  
16250 South Oak Park Avenue  
Tinley Park, Illinois 60477

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

FGM Architects, Inc.  
1211 West 22<sup>nd</sup> Street  
Suite 700  
Oak Brook, Illinois 60523

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

Tinley Park New Fire Station No. 47  
7825 W. 167<sup>th</sup> Street  
Tinley Park, Illinois 60477  
FGM Project No. 18-2533.01

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

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

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

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

Owner has contracted with Construction Manager as Constructor for this project, which Architect will work with. The following is a general description of the project parameters:

The design of a new satellite fire station to replace current Fire Station No. 47 (formally No. 2). Station will be approximately 10,000 sq. ft. with a basement with three (3) apparatus bays. Included in Design: Structural Engineering, Mechanical, Plumbing, and Electrical Engineering, and Landscape design.

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 Architect shall appropriately adjust the schedule, the Architect's services, and the Architect's compensation.

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

.1 Commencement of construction date:

March 2019

.2 Substantial Completion date:

March 2020

§ 1.3 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:

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

.1 General Liability

One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property.

.2 Automobile Liability

One Million Dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage covering non-owned and rented vehicles operated by the Architect.

.3 Workers' Compensation

Statutory Limits for Worker's Compensation; Employer's Liability Coverage of Five Hundred Thousand Dollars (\$500,000) each accident, disease, death

.4 Professional Liability

Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate

## 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 and the Construction Manager, research applicable design criteria, attend Project meetings reasonably requested by the Owner and/or Construction Manager, communicate with members of the Project team and report progress to the Owner and Construction Manager.

§ 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

Init.

only if the Architect becomes aware of any error, omission or inconsistency in such services or information; however, the 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 for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and a reasonable time for approval of submissions by authorities having jurisdiction over the Project. The Owner shall render decisions in a timely manner so as to not adversely affect the schedule or cause the schedule to be exceeded. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause outside the control of the Architect or Owner, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive, design change, or substitution made without the Architect's approval, which shall not be unreasonably withheld.

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

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

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare solely for use by the Owner a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to gain a general understanding of 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 Construction Manager and shall discuss with the Owner and Construction Manager 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 and Construction Manager regarding the requirements of the Project.

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

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

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



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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with and subject to Article 6.2 and 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Upon receipt of Owner's approval of the Schematic Design Documents, the Architect shall commence the Design Development Phase.

§ 3.2.8 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall identify agreed upon adjustments to the Project's size, quality or budget.

§ 3.2.9 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

*(Paragraph deleted)*

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

§ 3.3.4 The Architect shall provide one (1) exterior design concept to the Owner for approval as part of Basic Services. Any additional design concepts shall be charged as an Additional Service in accordance with Article 4.3.

### § 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 Construction Manager 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 design of the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) 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. Construction Manager will forward all bidding documents to Owner for Approval and to Architect for review and comments.

*(Paragraph deleted)*

§ 3.4.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the construction documents phase, the Architect shall take action as required under 6.5 and request the Owner's approval of the construction documents. Upon receipt of Owner's approval of the Construction Documents, the Architect shall commence the Bidding/Negotiation Phase.

§ 3.4.6 The Owner and Architect acknowledge that, given the nature of the design and construction process, certain inconsistencies, conflicts, error and/or omissions may exist in the Construction Documents prepared by the Architect. It is further acknowledged and agreed that as long as the number and type of such inconsistencies, conflicts, errors and/or omissions are reasonable and consistent with reasonable skill and care, such inconsistencies, conflicts, errors and/or omissions shall not constitute a material breach of this Agreement or a deviation from the applicable standard of care set forth herein. Notwithstanding the foregoing, the Architect and its consultants shall modify or correct any errors or omissions in the Construction Documents at no additional cost to Owner.

§ 3.4.7 If, as a result of Architect's failure to comply with the standard of care set forth in this Agreement, an error in the Construction Documents results in additional construction costs to the Owner, the Architect shall be responsible for compensating the Owner for additional design and construction costs for which the Architect is legally responsible in accordance with applicable law.

§ 3.4.8 If, as a result of the Architect's failure to comply with the standard of care set forth in this Agreement, an omission in the Construction Documents results in additional construction costs to the Owner, the Architect shall be responsible for compensating the Owner only for the additional costs related to adding the omitted item or element over and above that which the Owner would have paid had the omitted item or element been included in the original Construction Documents.

§ 3.4.9 All costs associated with the Architect's negligent errors or omissions which constitute "betterment" or "value added" to the Owner shall be borne by the Owner to the extent of such betterment or value added.

## **§ 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) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### **§ 3.5.2 COMPETITIVE BIDDING**

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

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

- .1 facilitating the electronic reproduction of Bidding Documents 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 written requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### **§ 3.5.3 NEGOTIATED PROPOSALS**

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

§ 3.5.3.2 The Architect shall assist the Owner and Construction Manager in obtaining proposals by

- .1 facilitating the electronic reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider written requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in Construction Manager's consensus doc 500 contract, General Conditions of the Contract for Construction to the extent required by this Agreement as subsequently modified and as finally agreed upon between Owner and Construction Manager. If the Owner and Construction Manager modify consensus docs 500, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement in writing to include such modifications. The terms and conditions of this Agreement shall govern and control the Architect's services on the Project.

§ 3.6.1.2 The Architect shall advise and consult with the Owner and Construction Manager 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 jobsite safety, including, but not limited to, safety precautions and programs in connection with the Work or compliance with any safety laws, standards, rules, regulations or guidelines governing the Work, nor shall the Architect be responsible for the Construction Manager'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 Construction Manager 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.

§ 3.6.1.4 The Architect shall not be responsible for any aspect of design, procurement, erection, construction, monitoring, observation or use of any scaffolds, hoists, cranes, ladders, bracing or supports of any type on the Project, whether temporary or permanent, nor shall the Architect have responsibility for construction barricades, barriers, safety cones, tape, warnings, signage, canopies or other similar devices of any kind, whether for vehicular or pedestrian traffic or otherwise on or around the Project site. No provision of this Agreement shall be interpreted to confer upon the Architect any duty owed under common law, statute or regulation to construction workers or any other persons regarding safety or the prevention of accidents at the Project.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site as required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to recommend to the Owner and Construction Manager that the Owner reject Work that does not conform to the Contract Documents. The Architect shall notify the Construction Manager about the rejection. Subject to Owner's written approval 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, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work, and the Architect

shall not be responsible for defects or deficiencies of the Construction Manager, Subcontractors, or suppliers resulting from their failure to complete Work in accordance with the Contract Documents.

**§ 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 Construction Manager. 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 Construction Manager, 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 Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in consensus docs 500, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents. In no event shall the Architect be liable for decisions made in such capacity if made in good faith.

### **§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONSTRUCTION MANAGER**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager 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 Construction Manager'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 substantially 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 Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager 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 Construction Manager's submittal schedule 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 adequate review.

**§ 3.6.4.2** After the Construction Manager reviews, approves, and transmits the submittals the Architect shall review or take other appropriate action 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. 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 Construction Manager'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 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 Construction Manager.

**§ 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 Article 3.6.4.2, the Architect or its consultants shall retain 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 for informational purposes only. 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 have no responsibility for any errors or omissions in the services or documentation provided by the Contractor's design professionals.

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

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager shall maintain the Owner's copy of submittals for Owner's records.

#### **§ 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 Article 3.6.5.1.

#### **§ 3.6.6 PROJECT COMPLETION**

**§ 3.6.6.1** The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager 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 Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work observed by the Architect complies with the requirements of the Contract Documents.

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

**§ 3.6.6.3** When the Work is found to be substantially complete, by the Construction Manager and the Architect and after certification by the Construction and the Architect, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, 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 Construction Manager: (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 Construction Manager under the Contract Documents.

**§ 3.6.6.5** 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 and Construction Manager, to review the warranties, 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 designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Additional Services must be approved by the Owner.

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

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Included	
§ 4.1.2 Preliminary designs	Included	
§ 4.1.3 Existing Facility Measured drawings	Not Provided	
§ 4.1.4 Existing facilities surveys	Not Provided	
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	Not Provided	
§ 4.1.6 Building information modeling (BIM Coordination)	Not Provided	

*(Row deleted)*

§ 4.1.7 Civil engineering	Not Provided	Design by Owner's consultants. Coordination included.
§ 4.1.8 Landscape design	Included	
§ 4.1.9 Architectural Interior Design	Included	
§ 4.1.10 Value Analysis	Not Provided	Provided under Construction Manager Scope
§ 4.1.11 Detailed cost estimating	Not Provided	Provided under Construction Manager Scope
§ 4.1.12 Continuous On-site project representation	Not Provided	Provided under Construction Manager Scope

*(Row deleted)*

§ 4.1.13 Conformed construction documents	Included	
§ 4.1.14 As-Designed Record drawings	Not Included	
§ 4.1.15 As-Constructed Record drawings	Not Provided	Provided under Construction Manager Scope
§ 4.1.16 Post occupancy evaluation (11 month warranty) (23 month as well if 2-year warranty is provided by the CM))	Included	
§ 4.1.17 Facility Support Services	Not Provided	
§ 4.1.18 Tenant-related services	Not Provided	
§ 4.1.19 Coordination of Owner's consultants	Included	Provided under Construction Manager Scope
§ 4.1.20 Telecommunications/data design	Not Provided	Design by Owner's consultants, Coordination Provided under Construction Manager Scope
§ 4.1.21 Security Evaluation and Planning	Not Provided	Design by Owner's consultants, Coordination Provided under Construction Manager Scope

*(Row deleted)*

§ 4.1.22 Basic Commissioning	Not Provided	Design by Owner's consultants. Provided under Construction Manager Scope
------------------------------	--------------	--

*(Row deleted)*

§ 4.1.23 Extensive environmentally responsible design	Not Provided	
---	--------------	--

Init.



§ 4.1.24	LEED® Certification	Not Provided	
§ 4.1.25	Fast-track design services	Not Provided	
§ 4.1.26	Historic Preservation (B205™-2007)	Not Provided	
§ 4.1.27	Furniture, Furnishings, and Equipment Design	Not Provided	Design by Owner's consultants
§ 4.1.28	Room Specific Audio/Visual (AV) system design	Not Provided	Design by Owner's consultants. Coordination included.
§ 4.1.29	Station Wide Public Address (PA) System Design	Not Provided	Design by Owner's consultants. Coordination included.
§ 4.1.30	Station alerting design	Not Provided	Design by Owner's consultants. Coordination included.

§ 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;
- .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 Construction Manager;
- .5 Preparing digital data for transmission to the Owner's consultants and Construction Manager, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, more than 4 public presentations, meetings or hearings.
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is partythereto;
- .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;
- .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 Contract Documents;
- .13 Services related to storm water management; or
- .14 Services related to permitting in excess of forty (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 prior to providing the additional services, 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 Construction Manager's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from

- a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Construction Manager'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 Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Construction Manager
- .2 One per 2 weeks ( 1/2 wks ) visits to the site by the Architect over the duration of the Project during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 Two ( 2 ) inspections for any portion of the Work to determine final completion

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

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 20 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs, including design changes necessitated by unforeseen conditions or concealed conditions, or a reasonable number of conflicts, errors or inconsistencies in the Contract Documents within the standard of care set forth herein. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic



evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

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

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

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

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

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

§ 5.13 The Owner shall contract separately for the consulting services in this Article 5. Unless otherwise indicated herein, the services to be provided by Owner's consultants shall be performed by licensed professionals who shall affix their seals on the appropriate documents prepared by them. The Owner shall require its consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflicts. The Architect shall have no responsibility for the components of the Project designed by Owner's consultants and vice-versa or for the adequacy of their drawings or other documentation. Review by the Architect of the work product of Owner's consultants 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 work product and shall not be required to review or verify calculations, designs or other documentation for compliance with applicable codes, laws, ordinances, rules and regulations nor shall Architect be responsible to discover errors or omissions in such documents or services.

§ 5.14 The Owner shall include in all contracts for construction Articles 3.5 and 3.18 of the AIA A-201 General Conditions of the Contract for Construction, 2007 Edition.

§ 5.15 The Owner shall include in all contracts for construction the requirement that the Construction Manager (s) name the Owner and Architect as additional insureds on all liability insurance policies required of the Construction Managers for the Project. Such insurance shall be required to be primary and non-contributory over any insurance carried by the owner or Architect.

## 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 Managers' 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 three (3%) percent of the Owner's budget for construction to cover ambiguities, inconsistencies, incompleteness, errors, or omissions in the Instruments of Service as defined in Article 7 herein furnished by the Architect. The Architect shall not be liable for errors or omissions unless such errors or omissions both exceed the contingency and constitute a breach of the standard of care set forth herein.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Construction Manager's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect, and the Architect shall have no responsibility for such variance nor shall the Architect be responsible if the bids or Cost of the Work exceeds the estimate or Owner's budget.

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

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall, as an Additional Service, modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the increased budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, and maintaining, the Project or for informational purposes only in connection with any alteration or addition 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 Construction Manager, 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 if the Architect is terminated without cause as provided in Article 9.5, the license granted in this Section 7.3 shall terminate.

*(Paragraph deleted)*

§ 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 The following provisions apply to any Instruments of Service provided in electronic format:

§ 7.5.1 The official Instruments of Service are the signed and sealed Drawings and Specification issued in paper format for use in connection with the Project.

§ 7.5.2 The Architect may shall provide for use to Owner from time to time upon request by Owner for its convenience, the Architect's Building Information Model and/or CAD or other electronic files. The design documents, calculations, drawings, details, backgrounds and other information prepared by the Architect in electronic format, whether incorporated in the BIM Model or in CAD format (hereinafter collectively referred to as "Electronic Instruments of Service") are instruments of the professional architectural service intended for use only in connection with the construction of this Project. The Electronic Instruments of Service are and shall remain the property of the Architect.

§ 7.5.3 The Electronic Instruments of Service are provided for the sole purpose of communicating the state of the design to date, and Owner acknowledges that such Electronic Instruments of Service may not be final or complete. Owner acknowledges that use by Owner or its contractors of the Electronic Instruments of Service is at the user's sole risk and responsibility. Under no circumstances shall such electronic files be used on other projects, for additions to the Project or completion of this Project by another design professional without the written consent of the Architect. Any such use or reuse by the Owner or others without the written consent of the Architect for the specific purpose intended shall be at the Owner's sole risk and without liability to the Architect. Any such consent or adaptation for use shall entitle the Architect to further compensation at rates to be mutually agreed upon by the Owner and Architect.

§ 7.5.4 Because of the possibility that data stored on electronic media or delivered in machine readable format may be subject to alteration, deterioration, incompatibility, translation and readability issues, whether inadvertently or otherwise, the Owner agrees that the Architect shall not be responsible or liability in connection with the completeness, accuracy or correctness of the Electronic Instruments of Service, information and data and use by the Owner is at its sole risk and responsibility. The Architect reserves the right to retain hard copy originals of all Project documentation delivered to the Owner in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the hard copy originals and the electronic information. No software shall be transferred to the Owner. The Owner's right to use electronic files or to use the Instruments of Services prepared by the Architect is conditional upon the Owner in full compliance with its obligations under this Agreement.

§ 7.5.5 The Owner acknowledges and understands that the use and automated conversion of information and data in the Electronic Instruments of Service provided by the Architect to a derivative work, model, or alternate system, format or version by the Owner may not be accomplished without the introduction of inexactitudes, anomalies, or errors.

§ 7.5.6 The electronic data files are intended to work only as described in the Agreement. These files are compatible only on AutoCAD 2012 or Revit Architecture 2012 or later releases. The Owner shall verify drawing release number and file format with the Architect at the time the files are transmitted. The Architect makes no warranty as to the compatibility of the electronic files.

## 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 The Owner shall name or require that its contractors name the Architect as an additional insured under any Builders Risk or property insurance policy maintained on the project.

*(Paragraph deleted)*

### § 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 litigation. 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 litigation. Prior to the initiation of mediation, on written notice of either party to the other of intent to mediate a dispute under this Agreement, each party shall designate a representative and shall meet within five (5) days after service of the notice of intent to mediate. The parties shall attempt to resolve the dispute through negotiation within ten (10) days of the meeting. Should the parties be unable to agree on a resolution with such ten (10) day period, the parties shall proceed to mediation as set forth here.

§ 8.2.2 The Owner and Architect may 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 or such other forum as the Owner and Architect may mutually agree in accordance with the administrative rules of the mediation services 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 but, in such event, mediation shall proceed in advance of litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

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

*(Check the appropriate box. 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

☒ Litigation in the 15<sup>th</sup> Judicial Circuit, Cook County, Illinois

☐ Other (Specify)

*(Paragraphs deleted)*

#### **ARTICLE 9 TERMINATION OR SUSPENSION**

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

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

*(Paragraph deleted)*

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

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement, if not defined herein, shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

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

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

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

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

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

Two hundred seventy thousand and 00/100 (\$270,000.00)

§ 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.)*

at cost, one-hundred percent (100%)

§ 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.)*

at cost, one-hundred percent (100%)

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %)

§ 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	percent (	20	%)
Construction Documents Phase	forty	percent (	40	%)
Bidding or Negotiation Phase	five	percent (	5	%)
Construction Phase	twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

§ 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.)*

Employee or Category	Rate
Arch IV	\$185.00
Arch III	\$145.00
Arch II	\$115.00
Arch I	\$90.00
Intern	\$65.00
Interior Designer IV	\$175.00
Interior Designer III	\$170.00
Interior Designer II	\$105.00
Interior Designer I	\$85.00
Landscape Architect	\$160.00
Project Administrator III	\$110.00
Project Administrator II	\$85.00
Project Administrator I	\$75.00
Principal	\$250.00

#### **§ 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 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .7 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;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other similar Project-related expenditures, as approved by Owner

**§ 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 for the amount of completion at time of termination 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 ( \$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.



§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. 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 Local Government Prompt Payment Act if applicable, or if not applicable, one percent per month %

§ 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.

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§ 12.2 Any written notices provided for in this Agreement and copies of all correspondence shall be transmitted to the Owner and the Architect at the following addresses:

Architect  
FGM Architects Inc.  
1211 W. 22<sup>nd</sup> Street, Suite 705  
Oak Brook, Illinois 60523

Owner  
Village of Tinley Park  
16250 South Oak Park Avenue  
Tinley Park, Illinois 60477

## 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 B101™-2007, Standard Form Agreement Between Owner and Architect, as herein modified.

.2

(Paragraphs deleted)

Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Consensus Docs 500 – General Conditions with Construction Manager, as finally executed



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

**OWNER**

Village of Tinley Park  
16250 South Oak Park Avenue  
Tinley Park, Illinois 60477

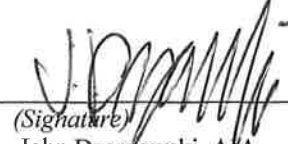


(Signature)  
**Jacob C. Vandenberg**  
**Village President**

(Printed name and title)

**ARCHITECT**

FGM Architects Inc.  
1211 W. 22<sup>nd</sup> Street, Suite 705  
Oak Brook, Illinois 60523



(Signature)  
**John Dzarnowski, AIA**  
**President**

(Printed name and title)



(Signature)  
**Andy Jasek, AIA**  
**Vice President**

(Printed name and title)