

AIA® Document B104® – 2017

Standard Abbreviated Form of Agreement Between Owner and Architect

AGREEMENT made as of the 27th day of March in the year 2024
(In words, indicate day, month and year.)

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

Wheaton Park District
102 E. Wesley St
Wheaton, IL 60187

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

Engineering Resource Associates, Inc.
3S701 West Avenue, Suite 150
Warrenville, IL 60555

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

Central Athletic Complex Parking Lot Design
500 S. Naperville Road
Wheaton, IL 60187

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below 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, and other information relevant to the Project.)

Wheaton Park District report for options to repair and/or replace parking lots at the Central Athletic Complex and design, engineering and permitting for the option(s) selected by the Owner, as more fully described in Engineering Resource Associates' proposal to Wheaton Park District dated February 15, 2024 (the "Proposal"), which is attached hereto as Exhibit 1 and incorporated herein.

§ 1.2 The Owner and Architect may reasonably 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. .

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

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants and advisors. The Architect shall provide the professional services set forth in this Agreement

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User Notes:

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consistent with the professional skill and care ordinarily provided by architects practicing in the Chicago metropolitan area under the same or similar circumstances. To the extent any services are engineering services which must be performed by a licensed engineer, those services shall be provided with the professional skill and care ordinarily provided by engineers practicing in the Chicago metropolitan area 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.

§ 2.2 The Architect shall obtain and maintain, at no expense to Owner, insurance as set forth in the Insurance Requirements Exhibit attached hereto and incorporated as Exhibit 2. If any of the requirements set forth in the Insurance Requirements Exhibit are in addition to the types and limits the Architect normally maintains, the Architect shall obtain and maintain the insurance at its cost, it being understood and agreed that the cost of any and all requirements in the Insurance Requirements is already included in the Architect's Compensation.

§ 2.3 The Architect shall timely pay all sums due to its consultants in accordance therewith and shall not cause or permit any liens to be placed by any such consultants against the property or funds of the Owner, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Upon Owner's request, Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

(Paragraphs deleted)

§ 2.4 All agreements between the Architect and its consultants shall be in writing and shall contain such provisions binding the Architect's consultants to the Architect, requiring Architect's consultant's to perform their scope of services in the same manner and to the extent that the Architect is bound to the Owner in accordance with this Agreement. The Architect shall timely pay all sums due to its consultants and shall not cause or permit any liens to be placed by any such consultants against the property or funds of the Owner, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Upon Owner's request, Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services. The Architect shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim, bond claim or other claim for payment by any Subcontractor or consultant of Architect of any tier. Upon receipt of notice of a lien claim, bond claim or other claim for payment, the Owner shall notify the Architect. If approved by the applicable court, when required, the Architect may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Architect's obligations under this Section shall survive the termination of this Agreement.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Basic Services to be provided by the Architect are those as described in the Proposal and this Agreement. The Proposal and this Agreement are complementary and supplementary, and the Architect shall provide all services described in or implied from all of these documents taken as a whole. The Architect's Proposal are fully incorporated herein by reference and made a part of this Agreement. In the event of a conflict between or among the foregoing items, the provision most favorable to Owner shall control. Basic Services include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall be entitled to reasonably rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. 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.

(Paragraph deleted)

§ 3.1.2 The Architect shall comply with the schedule for the performance of the Architect's services as set forth in the Proposal. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 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 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 discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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

§ 3.2.4 Based on the Project requirements, and as more fully set forth in the Proposal, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents and other items set forth in the Proposal appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

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

§ 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications and other items set forth in the Proposal setting forth in detail the 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 3.4.4.

§ 3.3.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

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

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

(Paragraphs deleted)

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. Any such Supplemental Services must be approved in writing by the Owner in advance. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement.

(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)

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§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services as many visits to the site by the Architect as deemed necessary by the Architect to perform the Basic Services. The Architect has included in Basic Services four (4) meetings with the Owner.

(Paragraphs deleted)

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 known 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.

(Paragraph deleted)

§ 5.3 To the extent possessed by Owner, 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.

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK

§ 6.1 Included in Architect's Basic Services is development of an Engineer's Opinion of Construction Costs to construct the work designed by Architect (the "Cost of the Work"). The Architect shall periodically update the Cost of the Work at the milestones set forth in item #7 of the Proposal. For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, reasonable overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

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(Paragraph deleted)

§ 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

(Paragraphs deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Owner and Architect agree that the Architect's preparation of all drawings, designs, specifications, notes and other elements of the conceptual design documents prepared by Architect and other services rendered in the performance of this Agreement is a service work done for hire and that all title, ownership and copyright privileges to all drawings, plans, specifications and other documents prepared by the Architect in connection with the Project (with the exception of standard design elements, architectural details, and industry or trade specifications which are not unique to the Owner or to the Owner's business) and which have been paid for by Owner in accordance with this Agreement, are and shall be solely in the Owner. Subject to payment by Owner in accordance with this Agreement, the Architect agrees, when requested by the Owner, to execute immediately any documents which evidence and acknowledge the ownership of all such drawings, plans, specifications and other documents in the Owner. All drawings, specifications, models and other materials prepared or furnished by the Architect shall be solely the property of the Owner upon the suspension or termination of the Project or the termination of this Agreement, provided Owner has made payment to the Architect for such materials in accordance with this Agreement. Reproducible copies of all drawings and specifications and all other such materials shall, to the extent not previously delivered, be delivered promptly to the Owner upon demand and payment in full by Owner of all amounts due Architect in accordance with this Agreement on outstanding invoices received from the Architect and thereafter may be used by the Owner in whole or in part or in modified form for such purposes as the Owner may deem advisable, without further employment of, or payment of additional compensation to, the Architect or anyone retained by the Architect. Notwithstanding the foregoing, the Architect retains the right to use standard design elements and architectural details which are neither unique to the Owner or the Project or related to the business of the Owner.

Should the Owner (a) use the drawings, renderings, specifications or other materials (hereinafter "Instruments of Service") on other projects or provide the Instruments of Service to third parties for their use on other projects or (b) upon termination of the Architect's services before completion of the Construction Documents phase, use the Instruments of Service for completion of this Project by others, the Owner shall release Architect from liability or claims arising from such use and shall defend, indemnify and hold harmless Architect from and against any and all claims, suits, demands, losses and expenses, including reasonable attorney's fees and legal expenses and all interest thereon, accruing from or arising from any of the foregoing uses.

(Paragraphs deleted)

§ 7.5 The provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than two (2) 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, consultants, agents, and employees of the other, for damages. The Owner or the Architect, as appropriate, shall require of the 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 and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

§ 8.2 Dispute Resolution

(Paragraphs deleted)

§ 8.2.3 The method of binding dispute resolution shall be the following:
(Check the appropriate box.)

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

If the Owner and Architect do not select a method of binding dispute resolution, 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.

(Paragraphs deleted)

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

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 fourteen days' written notice to the Owner before suspending services, and if the Owner cures, or commences action to cure, the nonperformance, the Architect may not suspend services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. If the suspension lasts more than 60 consecutive days, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 The Owner may suspend the Architect's Services or the Project at the Owner's convenience and without cause at any time upon written notice to the Architect. If the Project or the Architect's Services are suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed after suspension by the Owner without cause, the Architect's fees for the remaining services and the time schedules for the performance of the Architect's services shall be equitably adjusted, if and as appropriate given the stage of the Project at the time of suspension and resumption, and reason for the suspension. No adjustment shall be made if the suspension is attributable to the Architect's failure to perform the Services in accordance with this Agreement, for breach by the Architect of any provision of the Agreement, or for any other reason which is the fault of the Architect.

§ 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 fourteen days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than fourteen 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.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. Promptly upon the termination of this Agreement or the Architect's Services and payment in full of all outstanding invoices received from the Architect and not in dispute, the Architect shall deliver to the Owner copies of all documents prepared by Architect in the performance of its Services under this Agreement, including without limitation all drawings and specifications, and all models prepared by the Architect for the Project prior to the effect date of termination, so as to avoid any delay or increased cost of the Project.

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of Illinois. In the event either party initiates litigation regarding or under this Agreement, the only proper jurisdiction and venue shall be the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois and the parties hereby consent to the jurisdiction of and the proper venue in said Court and agree said venue is convenient and waive any challenge to same. Nothing contained in this Agreement shall be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 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 any payments due to the Architect by the Owner prior to the assignment.

(Paragraph deleted)

§ 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 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

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

.1 Stipulated Sum
(Insert amount)

Twenty eight thousand eight hundred thirty dollars and no cents (\$28,830.00), inclusive of Architect's and its consultants' fees and costs See schedule of fees included in Exhibit 1, which schedule is incorporated herein by reference.

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(Paragraphs deleted)

If the approved concept layout results in the need for stormwater detention design/management report, this work shall be performed upon Owner's written approval for the additional sum of three thousand two hundred dollars and no cents (\$3,200.00).

Notwithstanding anything in this Agreement to the contrary, Architect shall not incur more than one thousand dollars (\$1,000.00) in Reimbursable Expenses without prior written approval of Owner.

§ 11.2 For Supplemental Services identified 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.)

The Owner and Architect shall agree in writing to the compensation to be paid for Supplemental Services before the Architect provides any Supplemental Services.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The Owner and Architect shall agree in writing to the compensation to be paid for Additional Services before the Architect provides any Additional Services.

§ 11.4 No Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be paid by Owner unless Owner and Architect agree in writing to the compensation to be paid for Architect's consultant's Supplemental or Additional Services before the Architect's consultant provides any Supplemental or Additional Services.

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraph deleted)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;

(Paragraphs deleted)

- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual expenses incurred by the Architect and the Architect's consultants. Notwithstanding anything in this Agreement to the contrary, Architect shall not incur more than one thousand dollars (\$1,000.00) in Reimbursable Expenses without prior written approval of Owner. Architect shall provide all supporting documentation of Reimbursable Expenses.

§ 11.9 Payments to the Architect

§ 11.9.1 Initial Payment

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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.

§ 11.9.2 Progress Payments

(Paragraphs deleted)

§ 11.9.2.1 Payments shall be made in compliance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

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

§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be provided to the Owner at the time reimbursement is requested.

§ 11.10 Any provision of this Agreement to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

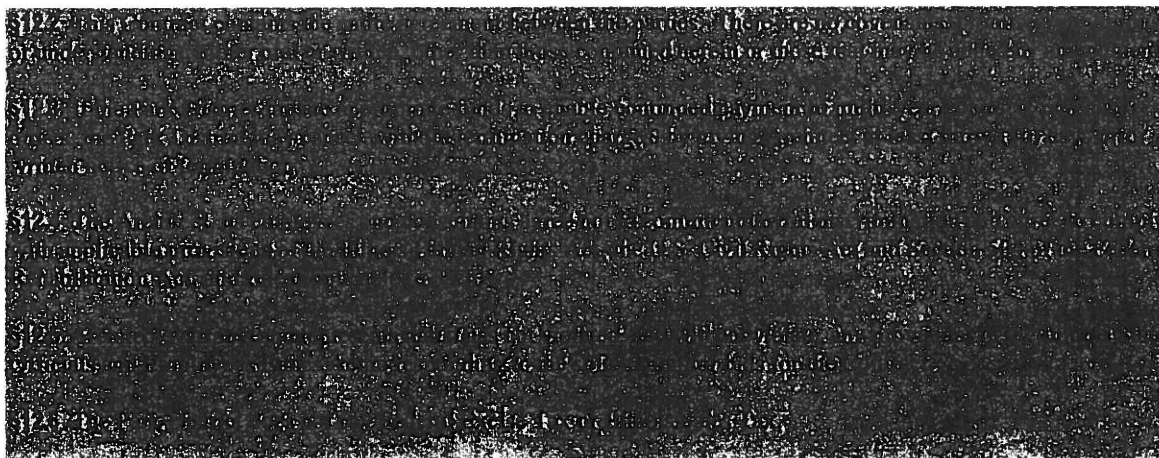
- .1 Architect is in default of any of its obligations under this Agreement;
 - .2 Any part of such payment is attributed to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which are performed in accordance with the Agreement; or
 - .3 Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services, unless Owner has failed to make payments to Architect for the Services of these persons after Architect has timely applied for such payment in accordance with this Agreement.
- However, Owner shall make payments of all undisputed amounts in accordance with the terms of this Agreement.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

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

§12.1 Notwithstanding any other provision of this Agreement, if either party is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Contract or to seek a declaration of rights under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and expenses and costs incurred (including but not limited to expert fees, transcription fees, deposition costs, copying and other costs) pertaining thereto including those fees and costs related to any appeal.



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§12.7 To the fullest extent permitted by law, the Architect and its consultants shall defend, indemnify and hold harmless the Owner, its officers, officials, employees, volunteers and agents and any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from performance of the Architect's services, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property loss of use therefrom, but only to the extent arising out of the acts or omissions of the Architect, Architect's consultants, 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 that would otherwise exist as to a party or person. Architect shall further defend, indemnify and hold harmless the Owner for claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from Architect's breach of this Agreement or default under this Agreement. Nothing herein shall be construed to require Architect to defend, indemnify or hold harmless the Owner for the acts or omissions of Owner or its offices, officials, employees, volunteers or agents. Architect's obligations under this Section shall survive the termination of the Contract.

§12.8 Architect hereby makes the following certifications:

- .1** Architect has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- .2** Architect shall abide by and comply with, and in contracts which it has with all persons providing any of the services or work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- .3** To the best of Architect's knowledge, no officer or employee of Architect has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- .4** Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Architect has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Architect's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Architect further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- .5** (i) Architect's Proposal was made without any connection or common interest in the profits anticipated to be derived from the Agreement by Architect with any other persons submitting any bid or proposal; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Architect without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Architect's bid proposal or in Architect, (iv) the Architect has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Architect. Additionally, the Architect shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.

- .6 Architect knows and understands the Equal Employment Opportunity Clause administered by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Architect further certifies that Architect is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.
- .7 Neither Architect nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- .8 Architect is not barred from contracting with the Owner because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Architect further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Architect.
- .9 If Architect has 25 or more employees at the time of letting of this Agreement, Architect knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Architect further certifies that it has not been debarred and is not ineligible for award of this Agreement as the result of a violation of the Illinois Drug Free Workplace Act.
- .10 Architect further understands and agrees: a) that because Owner is an Illinois unit of local government, all documents associated with this Project may be subject to disclosure pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA"); b) Architect shall comply with the requirements and provisions of FOIA and, upon request of the Owner's designated Freedom of Information Act Officer (FOIA Officer), Architect shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Architect that is deemed a public record under FOIA.

ARTICLE 13 SCOPE OF THE AGREEMENT

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

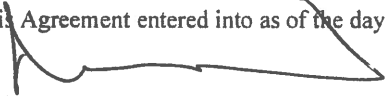
§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B104™-2017, Standard Abbreviated Form of Agreement Between Owner and Architect
- .2
- .3 Exhibits:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits identified in Section 4.1.)

Engineering Resource Associates' Proposal dated February 14, 2024, attached as Exhibit 1.
Insurance Requirements exhibit attached hereto as Exhibit 2.
- .4 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Init.

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



OWNER (Signature)

Michael Benard Executive Director

(Printed name and title)



ARCHITECT (Signature)

Jon P. Green President

(Printed name, title, and license number, if required)

Int.

Additions and Deletions Report for AIA® Document B104® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:23:44 ET on 03/27/2024.

PAGE 1

AGREEMENT made as of the 27th day of March in the year 2024

...

Wheaton Park District
102 E. Wesley St
Wheaton, IL 60187

...

Engineering Resource Associates, Inc.
3S701 West Avenue, Suite 150
Warrenville, IL 60555

...

Central Athletic Complex Parking Lot Design
500 S. Naperville Road
Wheaton, IL 60187

PAGE 2

Wheaton Park District report for options to repair and/or replace parking lots at the Central Athletic Complex and design, engineering and permitting for the option(s) selected by the Owner, as more fully described in Engineering Resource Associates' proposal to Wheaton Park District dated February 15, 2024 (the "Proposal"), which is attached hereto as Exhibit 1 and incorporated herein.

§ 1.2 The Owner and Architect may reasonably 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. ~~The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

§ 2.1 The Architect's services consist of those services performed by the Architect, Architect's employees, and Architect's consultants and advisors. The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in ~~the same or similar~~

~~locality the Chicago metropolitan area under the same or similar circumstances. To the extent any services are engineering services which must be performed by a licensed engineer, those services shall be provided with the professional skill and care ordinarily provided by engineers practicing in the Chicago metropolitan area 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.~~

~~§ 2.2 The Architect shall maintain the following insurance until termination of this Agreement. obtain and maintain, at no expense to Owner, insurance as set forth in the Insurance Requirements Exhibit attached hereto and incorporated as Exhibit 2. If any of the requirements set forth below in the Insurance Requirements Exhibit are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8: (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)~~ Architect shall obtain and maintain the insurance at its cost, it being understood and agreed that the cost of any and all requirements in the Insurance Requirements is already included in the Architect's Compensation.

~~1. General Liability~~ § 2.3 The Architect shall timely pay all sums due to its consultants in accordance therewith and shall not cause or permit any liens to be placed by any such consultants against the property or funds of the Owner, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Upon Owner's request, Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

~~2. Automobile Liability~~

~~3. Workers' Compensation~~

~~4. Professional Liability~~

§ 2.4 All agreements between the Architect and its consultants shall be in writing and shall contain such provisions binding the Architect's consultants to the Architect, requiring Architect's consultant's to perform their scope of services in the same manner and to the extent that the Architect is bound to the Owner in accordance with this Agreement. The Architect shall timely pay all sums due to its consultants and shall not cause or permit any liens to be placed by any such consultants against the property or funds of the Owner, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Upon Owner's request, Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services. The Architect shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim, bond claim or other claim for payment by any Subcontractor or consultant of Architect of any tier. Upon receipt of notice of a lien claim, bond claim or other claim for payment, the Owner shall notify the Architect. If approved by the applicable court, when required, the Architect may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Architect's obligations under this Section shall survive the termination of this Agreement.

PAGE 3

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and Basic Services to be provided by the Architect are those as described in the Proposal and this Agreement. The Proposal and this Agreement are complementary and supplementary, and the Architect shall provide all services described in or implied from all of these documents taken as a whole. The Architect's Proposal are fully incorporated herein by reference and made a part of this Agreement. In the event of a conflict between or among the foregoing items, the provision most favorable to Owner shall control. Basic Services include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

~~§ 3.1.1~~ The Architect shall ~~coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to be~~ entitled to reasonably rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

~~§ 3.1.2~~ 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. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.2 The Architect shall comply with the schedule for the performance of the Architect's services as set forth in the Proposal. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

PAGE 4

§ 3.2.4 Based on the Project requirements, and as more fully set forth in the Proposal, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents and other items set forth in the Proposal appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

...

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications and other items set forth in the Proposal setting forth in detail the 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 3.4.4.

...

§ 3.4 Construction Phase Services

§ 3.4.1 General

~~§ 3.4.1.1~~ The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™ 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104 2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

~~§ 3.4.1.2~~ 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.

~~§ 3.4.1.3~~ Subject to Section 4.2, 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.

§ 3.4.2 Evaluations of the Work

~~§ 3.4.2.1~~ The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully

completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 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.

§ 3.4.2.4 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.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

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

§ 3.4.4 Submittals

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

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

~~§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.~~

~~§ 3.4.5 Changes in the Work~~

~~The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.~~

~~§ 3.4.6 Project Completion~~

~~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; forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.~~

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. Any such Supplemental Services must be approved in writing by the Owner in advance. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement.

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§ 4.2.2 The Architect has included in Basic Services ~~(—) visits to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service as many visits to the site by the Architect as deemed necessary by the Architect to perform the Basic Services. The Architect has included in Basic Services four (4) meetings with the Owner.~~

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

§ 4.2.4 If the services covered by this Agreement have not been completed within ~~(—) 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.~~

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

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

~~§ 5.3 To the extent possessed by Owner, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; Project and a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project site.~~

~~§ 5.4 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 require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.~~

~~§ 5.5 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.~~

~~§ 5.6 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.~~

~~§ 5.7 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.~~

~~§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.~~

~~§ 5.9 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.~~

~~§ 5.10 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.~~

§ 6.1 Included in Architect's Basic Services is development of an Engineer's Opinion of Construction Costs to construct the work designed by Architect (the "Cost of the Work"). The Architect shall periodically update the Cost of the Work at the milestones set forth in item #7 of the Proposal. For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, reasonable overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

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

PAGE 6

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

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

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

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

~~§ 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. Owner and Architect agree that the Architect's preparation of all drawings, designs, specifications, notes and other elements of the conceptual design documents prepared by Architect and other services rendered in in the performance of this Agreement is a service work done for hire and that all title, ownership and copyright privileges to all drawings, plans, specifications and other documents prepared by the Architect in connection with the Project (with the exception of standard design elements, architectural details, and industry or trade specifications which are not unique to the Owner or to the Owner's business) and which have been paid for by Owner in accordance with this Agreement, are and shall be solely in the Owner. Subject to payment by Owner in accordance with this Agreement, the Architect agrees, when requested by the Owner, to execute immediately any documents which evidence and acknowledge the ownership of all such drawings, plans, specifications and other documents in the Owner. All drawings, specifications, models and other materials prepared or furnished by the Architect shall be solely the property of the Owner upon the suspension or termination of the Project or the termination of this Agreement, provided Owner has made payment to the Architect for such materials in accordance with this Agreement. Reproducible copies of all drawings and specifications and all other such materials shall, to the extent not previously delivered, be delivered promptly to the Owner upon demand and payment in full by Owner of all amounts due Architect in accordance with this Agreement on outstanding invoices received from the Architect and thereafter may be used by the Owner in whole or in part or in modified form for such purposes as the Owner may deem advisable, without further employment of, or payment of additional compensation to, the Architect or anyone retained by the Architect. Notwithstanding the foregoing, the Architect retains the right to use standard design elements and architectural details which are neither unique to the Owner or the Project or related to the business of the Owner.~~

~~Should the Owner (a) use the drawings, renderings, specifications or other materials (hereinafter "Instruments of Service") on other projects or provide the Instruments of Service to third parties for their use on other projects or (b) upon termination of the Architect's services before completion of the Construction Documents phase, use the Instruments of Service for completion of this Project by others, the Owner shall release Architect from liability or claims arising from such use and shall defend, indemnify and hold harmless Architect from and against any and all claims, suits, demands, losses and expenses, including reasonable attorney's fees and legal expenses and all interest thereon, accruing from or arising from any of the foregoing uses.~~

~~§ 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 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the~~

Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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

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

§ 7.5 Except as otherwise stated in Section 7.3, the The provisions of this Article 7 shall survive the termination of this Agreement.

...

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than ~~40~~ two (2) 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, the 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 A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.~~ damages. 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.

PAGE 7

§ 8.2 Mediation/Dispute Resolution

§ 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 Mediation, 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 this Agreement. 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.

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

...

~~§ 8.3 Arbitration~~

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.4 Consolidation or Joinder~~

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

...

~~§ 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-fourteen days' written notice to the Owner before suspending services, and if the Owner cures, or commences action to cure, the nonperformance, the Architect may not suspend services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The If the suspension lasts more than 60 consecutive days, 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 The Owner may suspend the Architect's Services or the Project at the Owner's convenience and without cause at any time upon written notice to the Architect. If the Project or the Architect's Services are suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The~~

~~Architect's resumed after suspension by the Owner without cause, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted for the performance of the Architect's services shall be equitably adjusted, if and as appropriate given the stage of the Project at the time of suspension and resumption, and reason for the suspension. No adjustment shall be made if the suspension is attributable to the Architect's failure to perform the Services in accordance with this Agreement, for breach by the Architect of any provision of the Agreement, or for any other reason which is the fault of the Architect.~~

§ 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~~ fourteen days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than ~~seven~~ fourteen 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.

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§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. Promptly upon the termination of this Agreement or the Architect's Services and payment in full of all outstanding invoices received from the Architect and not in dispute, the Architect shall deliver to the Owner copies of all documents prepared by Architect in the performance of its Services under this Agreement, including without limitation all drawings and specifications, and all models prepared by the Architect for the Project prior to the effect date of termination, so as to avoid any delay or increased cost of the Project.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

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

1 — Termination Fee:

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

§ 9.8 ~~Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.~~

§ 10.1 This Agreement shall be governed by the law of ~~the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~ Illinois. In the event either party initiates litigation regarding or under this Agreement, the only proper jurisdiction and venue shall be the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois and the parties hereby consent to the jurisdiction of and the proper venue in said Court and agree said venue is convenient and waive any challenge to same. Nothing contained in this Agreement shall be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity.

...

§ 10.4 ~~If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of 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.~~

...

§ 10.7 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. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. ~~The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.~~ This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

...

Twenty eight thousand eight hundred thirty dollars and no cents (\$28,830.00), inclusive of Architect's and its consultants' fees and costs See schedule of fees included in Exhibit I, which schedule is incorporated herein by reference.

~~2~~ Percentage Basis
~~(Insert percentage value)~~

~~() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6. If the approved concept layout results in the need for stormwater detention design/management report, this work shall be performed upon Owner's written approval for the additional sum of three thousand two hundred dollars and no cents (\$3,200.00).~~

~~3~~ Other
~~(Describe the method of compensation)~~ Notwithstanding anything in this Agreement to the contrary, Architect shall not incur more than one thousand dollars (\$1,000.00) in Reimbursable Expenses without prior written approval of Owner.

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The Owner and Architect shall agree in writing to the compensation to be paid for Supplemental Services before the Architect provides any Supplemental Services.

...

The Owner and Architect shall agree in writing to the compensation to be paid for Additional Services before the Architect provides any Additional Services.

§ 11.4 ~~No~~ Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be ~~the amount invoiced to the Architect plus~~ percent ~~()~~%, or as follows:

paid by Owner unless Owner and Architect agree in writing to the compensation to be paid for Architect's consultant's Supplemental or Additional Services before the Architect's consultant provides any Supplemental or Additional Services.

~~§ 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:~~

Design Phase	percent (%)
Construction Documents Phase	percent (%)
Construction Phase	percent (%)
Total Basic Compensation	one hundred percent (100 %)

~~§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent~~

budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

~~§ 11.6.1~~ When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

~~§ 11.7~~ The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

Employee or Category

Rate

...

~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;

...

~~.8~~ Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;

~~.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 actual expenses incurred by the Architect and the Architect's consultants plus percent (~~—~~%) of the expenses incurred consultants. Notwithstanding anything in this Agreement to the contrary, Architect shall not incur more than one thousand dollars (\$1,000.00) in Reimbursable Expenses without prior written approval of Owner. Architect shall provide all supporting documentation of Reimbursable Expenses.

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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.

...

~~§ 11.9.2.1~~ 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 (~~—~~) 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.)*

—%

§ 11.9.2.1 Payments shall be made in compliance with the Illinois Local Government Prompt Payment Act (50 ILCS 505/1 et seq.).

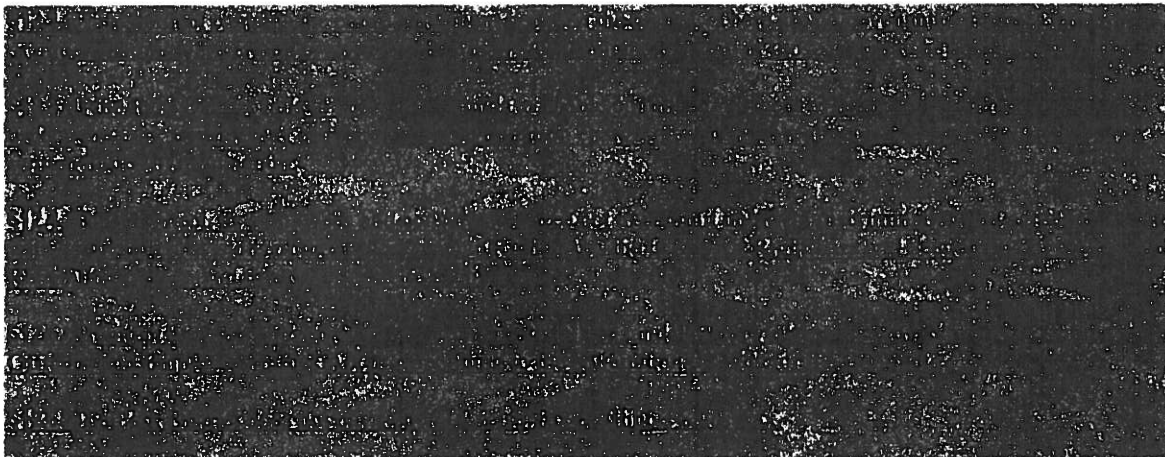
§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times, provided to the Owner at the time reimbursement is requested.

§ 11.10 Any provision of this Agreement to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a Progress Payment or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

- .1 Architect is in default of any of its obligations under this Agreement;
 - .2 Any part of such payment is attributed to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which are performed in accordance with the Agreement; or
 - .3 Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services, unless Owner has failed to make payments to Architect for the Services of these persons after Architect has timely applied for such payment in accordance with this Agreement.
- However, Owner shall make payments of all undisputed amounts in accordance with the terms of this Agreement.

...

§12.1 Notwithstanding any other provision of this Agreement, if either party is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Contract or to seek a declaration of rights under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and expenses and costs incurred (including but not limited to expert fees, transcription fees, deposition costs, copying and other costs) pertaining thereto including those fees and costs related to any appeal.



§12.7 To the fullest extent permitted by law, the Architect and its consultants shall defend, indemnify and hold harmless the Owner, its officers, officials, employees, volunteers and agents and any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from performance of the Architect's services, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property loss of use therefrom, but only to the extent arising out of the acts or omissions of the Architect, Architect's consultants, 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 that would otherwise exist as to a party or person. Architect shall further defend, indemnify and hold harmless the Owner for claims, damages, losses, and expenses, including but not limited to attorneys' fees and costs, arising out of or resulting from Architect's breach of this Agreement or default under this Agreement. Nothing herein shall be construed to require Architect to defend, indemnify or hold harmless the Owner for the acts or omissions of Owner or its offices, officials, employees, volunteers or agents. Architect's obligations under this Section shall survive the termination of the Contract.

§12.8 Architect hereby makes the following certifications:

- .1 Architect has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- .2 Architect shall abide by and comply with, and in contracts which it has with all persons providing any of the services or work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- .3 To the best of Architect's knowledge, no officer or employee of Architect has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- .4 Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Architect has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Architect's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Architect further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- .5 (i) Architect's Proposal was made without any connection or common interest in the profits anticipated to be derived from the Agreement by Architect with any other persons submitting any bid or proposal; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Architect without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Architect's bid proposal or in Architect; (iv) the Architect has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Architect. Additionally, the Architect shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- .6 Architect knows and understands the Equal Employment Opportunity Clause administrated by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Architect further certifies that Architect is an "equal opportunity employer" as defined by Section 2000(e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.
- .7 Neither Architect nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- .8 Architect is not barred from contracting with the Owner because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Architect further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Architect.

.9 If Architect has 25 or more employees at the time of letting of this Agreement, Architect knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Architect further certifies that it has not been debarred and is not ineligible for award of this Agreement as the result of a violation of the Illinois Drug Free Workplace Act.

.10 Architect further understands and agrees: a) that because Owner is an Illinois unit of local government, all documents associated with this Project may be subject to disclosure pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 et seq.) ("FOIA"); b) Architect shall comply with the requirements and provisions of FOIA and, upon request of the Owner's designated Freedom of Information Act Officer (FOIA Officer), Architect shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Architect that is deemed a public record under FOIA.

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.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203 2013 incorporated into this agreement.)


...

Engineering Resource Associates' Proposal dated February 14, 2024, attached as Exhibit 1.
Insurance Requirements exhibit attached hereto as Exhibit 2.

PAGE 13

Michael Benard Executive Director

Jon P. Green President



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Brian J. Armstrong, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:23:44 ET on 03/27/2024 under Order No. 4104241272 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.

Brian J. Armstrong
(Signed)

Attorney
(Title)

March 27, 2024
(Dated)

EXHIBIT C
CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Park District and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by the Park District.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; and 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds.
- C. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Park District, immediately in writing, if it occurs prior to entering into the Contract therewith.
- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. (i) Contractor's proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Park District has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Park District and the Park District's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Park District and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- I. Contractor knows and understands the Equal Employment Opportunity Clause administrated by the Illinois

Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

- K. Contractor is not barred from contracting with the Park District because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Park District, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- L. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- M. Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 *et seq.*) and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

Engineering Resource Assoc. Inc.
CONTRACTOR

By: [Signature]
Its: VICE PRESIDENT

STATE OF ILLINOIS

COUNTY OF DU PAGE)SS

I, the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that John Wayne appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: 5/1/2024

(SEAL)

[Signature]
(Notary Public)



EXHIBIT B
INSURANCE AND INDEMNIFICATION REQUIREMENTS

I. Insurance

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or at Owner's sole option on a more current ISO form or a substitute form providing at least equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Owner shall be included as an insured under the CGL, using ISO additional insured endorsement **CG 20 10 12/19 and CG 2037 12/19** or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Business Auto and Umbrella Liability Insurance

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing at least equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage at least equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured

endorsement **CG 20 10 12/19** and **CG 2037 12/19** or a substitute endorsement acceptable to Owner under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's and Architect's work.

D. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, and such other evidence of insurance as shall be requested by Owner, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the Contract site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

Failure to maintain the required insurance may result in termination of this Agreement at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as

respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

I. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's obligations pursuant to this Agreement, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission, by the Contractor, any subcontractor, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Park District's officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of breach of any of their obligations under, or default of, any provision of the Agreement.

The Work of this Project is subject to the Illinois *Prevailing Wage Act*, 820 ILCS 130/0.01 *et seq.* A prevailing wage determination has been made by the Park District, which is the same as that determined by the Illinois Department of Labor for public works projects in DuPage County. The Contract entered into for the Work will be drawn in compliance with said law and proposals should be prepared accordingly and provide for payment of all laborers, workmen, and mechanics needed to perform the Work at no less than the prevailing rate of wages (or the prevailing rate for legal holiday and overtime work) for each craft, type of worker, or mechanic.

IMPORTANT NOTICE OF RESPONSIBILITY FOR PERIODIC REVISIONS TO PREVAILING WAGE RATES

Revisions of the following Prevailing Wage Rates are made periodically by the Illinois Department of Labor. These may be accessed by computer at <http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx>. As required by the Prevailing Wage Act, any and all such revisions supersede the Park District's June determination. Bidders and contractors performing work on this Project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of the Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. In consideration for the award to it of the contract for this Project, the contractor agrees that the foregoing notice satisfies any obligation of the public body in charge of this Project to notify the contractor of periodic changes in the prevailing wage rates and the contractor agrees to assume and be solely responsible for, as a material

obligation of the contractor under the contract, the obligation to determine periodic revisions of the prevailing wage rates, to notify its subcontractors of such revisions, to post such revisions as required for the posting of wage rates under the Act, and to pay and require its subcontractors to pay wages in accordance with such revised rates.

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