



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

## Standard Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the \_\_\_\_\_ day of September in the year Two Thousand Fifteen  
(In words, indicate day, month and year)

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

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187

and the Engineer  
(Name, address and other information)

Elara Energy Services, Inc.  
30 North Wolf Road  
2<sup>nd</sup> Floor  
Hillside, IL 60162-1605

For purposes of this Agreement, "Architect" shall mean "Engineer." Engineer to provide mechanical and electrical engineering services

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

Central Athletic Center New Chiller System - Installation of new chiller system to serve Owner's Central Athletic Center, 500 S. Naperville Road, Wheaton, IL, as well as a new outdoor ice rink.

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.

Init.

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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

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

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

Owner and Architect hereby agree and understand that Architect's obligations for the Construction Phase Services as enumerated in Article 3.6 of this Agreement are subject to separate approval by Owner's Board upon completion of the Bidding Phase of the Project. Owner may, but is under no obligation to retain Architect for the Construction Phase Services of this Project. If Owner elects to retain Architect for the Construction and Functional Testing Phase Services of this Project, Architect's fee for the Construction and Functional Testing Phase Services shall be as provided in Section 11.1 of this Agreement.

Estimated Cost of the Work is \$400,000.

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

1. Commencement of construction date: TBD

*(Paragraph deleted)*

2. Substantial Completion date: TBD

§ 1.3 The Owner and Architect may reasonably rely on the Initial Information.

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## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants and advisors (Architect's consultants and advisors being hereinafter collectively referred to as Architect's "consultants") as described in this Agreement. The services to be provided or furnished by the Architect, its employees and consultants under this Agreement are sometimes hereinafter collectively referred to as the "Architect's services" or "Services".

§ 2.2 Architect understands and acknowledges that it has been engaged by the Owner to provide Architect's Services based, in part, on the Architect's represented character, expertise, experience and qualifications in providing architectural services comparable to those to be provided under this Agreement and on projects comparable in kind and scope to this Project. The Architect's services shall be performed properly and expeditiously to permit the orderly and timely progress and proper performance both of the Architect's services and the Work, consistent with such professional skill, care and diligence and good engineering practices as are exercised by a competent engineer with experience in the design and administration of projects of comparable kind and scope to this Project and practicing architecture in the Chicago metropolitan areas (such skill, care, diligence and practices being hereinafter referred to as the "Professional Standard").

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. All persons connected with the Architect as an officer, employee or agent of or consultant to the Architect, who are directly in charge of the professional engineering work performed as part of Architect's services, are, and for so long as any Services shall be provided under this Agreement, shall be duly registered and licensed under and in accordance with Illinois laws regarding the practice of engineering, as applicable to this Project, and they and any other consultants selected by the Architect and providing Services with respect to the Project shall be otherwise qualified and possess the skill and competence required to perform the Services properly. The Architect accepts responsibility for the acts and omissions of its employees, agents and consultants, and their respective employees and agents.

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

§ 2.5 The Architect's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Construction Documents authored by the Architect or its consultants or subcontractors, nor shall anything contained in this Agreement be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity for damages sustained or expense incurred because of, or arising out of, Architect's errors, omissions, or failure to perform its duties or covenants in accordance with this Agreement. The grant of various rights to the Owner under this Agreement, and/or the failure of the Owner to exercise those rights do not and shall not create any responsibility or liability in the Owner for any error or omission of the Architect in the provision of its Services. Notwithstanding this provision, the Owner shall be responsible for all design decisions directed by the Owner over the specific written contrary recommendation of the Architect.

§ 2.6 All agreements between the Architect and its consultants shall be in writing and shall contain such provisions as shall ensure the performance of the Architect's Services in accordance with this Agreement. 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. Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

§ 2.7 The Architect has informed the Owner that minor imperfections in the instruments of service prepared by Architect which do not adversely affect the structural integrity of the Work or the mechanical systems incorporated in the Work is typical and expected from engineers performing these types of services. The Architect shall provide such Services required for or associated with the correction of any such imperfections, including the administration of the corrective work at no cost to the Owner, as well as pay for the construction costs associated with the corrective work that is not a "betterment" to the Project for which the Owner would be responsible under applicable Illinois law. Notwithstanding the foregoing, the Parties acknowledge that minor imperfections in the instruments of service of the Architect as well as in Bid and Contract Documents prepared by persons other than the Architect may occur and the

Parties agree to attempt to resolve any disputes resulting therefrom in a fair and equitable manner under the circumstances presented.

§ 2.8 The Architect shall furnish a competent and adequate staff, and contract with competent consultants as necessary for the proper administration, coordination, supervision and performance of the Architect's services. The Architect's representative shall not be changed without the consent of the Owner, unless such person leaves the employ of the Architect, in which event the substitute must first be approved in writing by the Owner which approval shall not be unreasonably withheld or delayed. The Architect agrees that the Architect will change its assistants assigned to provide the Services at the reasonable request of the Owner, if, in the Owner's reasonable opinion, based on actual instances of deficient performance, such person's performance does not equal or exceed the Professional Standard, or the acts or omissions of such person are detrimental to the timely and/or proper performance of the Architect's services or the Work; provided however that the Owner's exercise of such right or failure to exercise such right shall not affect Architect's responsibility or liability for the proper performance of the Services. The Architect accepts responsibility for the acts and omissions of its employees and consultants. The Architect shall coordinate all aspects of the Architect's services.

§ 2.9 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement  
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1. General Liability. Architect shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than **\$3,000,000** for 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 a substitute form providing 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 or a substitute providing 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. 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.
2. Automobile Liability. Architect shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$1,000,000** for 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 equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.
3. Workers' Compensation. Architect 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** for each accident for bodily injury by accident or for 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 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Architect waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Architect's work.
4. Professional Liability. Architect shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$1,000,000** for each wrongful act arising out of the performance or failure to perform professional services and **\$2,000,000** aggregate.

## General Insurance Provisions

**1. Evidence of Insurance.** Prior to beginning work, Architect shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for thirty (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 Architect's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Architect from entering the project 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 Contract at Owner's option. Architect shall provide certified copies of all insurance policies required above within ten (10) days of Owners' 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 Architect'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 Architect 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.** Architect shall cause each subcontractor employed by Architect to purchase and maintain insurance of the type specified above. When requested by the Owner, Architect shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

**§ 2.10 Indemnification.** To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents from and against all third party claims, damages, losses and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Architect's services, 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, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Architect, Architect's consultants and subconsultants, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Architect shall similarly protect, indemnify and hold and save harmless the Owner, its 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 Architect's breach of any of its obligations under, or Architect's default of, any provision of the Contract.

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

**§ 3.1** The services to be provided by the Architect as described in Architect's Proposal dated August 11, 2015, and this Agreement are complimentary and supplementary and the Architect shall provide all of the services described in, or implied from, all of these documents, taken as a whole and include usual and customary mechanical and electrical engineering services. In the event of conflict between or among the provisions of the foregoing documents relative to each phase of the Project, the provisions most favorable to Owner shall control.

§ 3.1.1 The Architect shall manage the Architect's services, including any services provided by Architect's consultants, as enumerated under this Agreement, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services and any of Architect's consultant's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's and Owner's Board of Commissioner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, as determined by Owner, be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive to third parties or substitution made without the Architect's prior approval. The Architect's prior knowledge via written notification by the Owner or other written instrument provided to or prepared by the Architect, of Owner's intended directive or substitution and failure to object thereto in writing within three (3) days shall constitute the Architect's approval of such directive or substitution.

§ 3.1.5 The Architect shall thoroughly review the Owner's program and other information furnished by the Owner and any other information which the Architect deems necessary or advisable to determine the nature and extent of, and develop solutions to resolve, any technical or other difficulties or problems in implementing the Project and achieving successful Project completion consistent with the Owner's stated needs, goals and objectives and the Project requirements. As part of this process, the Architect will visit the Project site and become thoroughly familiar with existing conditions, including activities and uses which will continue while the Project is in progress. The Architect shall also review and ascertain governmental requirements and utilities requirements applicable to the Architect's Services and the design and construction of the Project including ascertaining timing considerations for submissions to and review by such entities. The Architect shall notify the Owner promptly in order not to adversely affect the proposed Project schedule, of (1) any inconsistencies discovered in the information and (2) any information or consulting services that may be reasonably needed for the Project. The Architect shall review and discuss with the Owner proposed site use and improvements; selection of materials; building systems and equipment; identification of long-lead items; labor availability, any special governmental or utilities requirements; and timing/scheduling issues.

The Architect shall be responsible to the Owner for any claims, damages, losses and expenses arising from the Architect's failure to follow applicable laws, codes and regulations in execution of all of Architect's services pursuant to this Agreement.

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

## § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services. As part of the Design Phase, Engineer shall use the conceptual design plan Engineer prepared for Owner dated November 26, 2012.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

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

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

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

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

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

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work at the completion of the Design Development Phase due to any Owner approved adjustments.

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

### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents: a) the design requirements of governmental authorities having jurisdiction over the Project; and b) the details necessary to obtain the required permits to construct the Project.

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

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

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

### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

#### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or, if the Project is not required to be bid, negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### § 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements, proposed Contract Documents, and any other documents as Owner deems appropriate.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project in compliance with all applicable laws by:

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

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

*(Paragraphs deleted)*

### § 3.6 CONSTRUCTION AND FUNCTIONAL TESTING PHASE SERVICES

Architect's obligations under this Section 3.6 are subject to Section 1.1 of this Agreement. In the event Architect does not provide any Construction and Functional Testing Phase Services, Architect shall not be paid that portion of Architect's fee for these services as specified in Section 11.1.

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction as amended by Owner.

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§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. Architect shall be responsible for evaluating the Work in accordance with 3.6.2.1. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates one year from the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 Duties, responsibilities and limitations of the Architect under this Article 3.6 shall not be restricted, modified or extended without prior written approval of Owner.

### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to supervise the progress and quality of the Work, and to determine if the Work 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. After each site visit, the Architect shall provide the Owner a written report about the progress and quality of the Work, and report to the Owner (1) any deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) any defects and deficiencies in the Work.

§ 3.6.2.2 With concurrence from Owner, the Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable with concurrence of the Owner, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed.

*(Paragraphs deleted)*

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

§ 3.6.3.2 The issuance of a Certificate for Payment shall be a representation that the Contractor is entitled to payment in the amount certified.

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

### § 3.6.4 SUBMITTALS

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

§ 3.6.4.2 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of ensuring that all submittals reflect accurate details such as quantities and dimensions and that the Work will be completed in compliance with the Contract

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Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include a written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness so as to not cause delay in the Work or in the activities of Owner or Contractor. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

#### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

#### § 3.6.6 PROJECT COMPLETION

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

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Upon completion of the installation of the new system, Engineer shall provide functional testing services of the new system in accordance with Engineer's Proposal. The presence of Owner shall neither be construed as approval of the Work, nor as the waiver of any rights of the Owner against the Architect or Contractor.

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

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

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

#### ARTICLE 4 ADDITIONAL SERVICES

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

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

Additional Services	Responsibility (Architect or Owner)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™–2007)		
§ 4.1.6 Building information modeling		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape		
§ 4.1.9 Architectural Interior Design (B252™–2007)		
§ 4.1.10 Value Analysis (B204™–2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 Additional On-site project representation		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-designed record drawings		
§ 4.1.15 As-constructed record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™–2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		
§ 4.1.22 Commissioning (B211™–2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™–2007)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™–2007)		
§ 4.1.27 Furniture, Finishings, and Equipment Design (B253™–2007)		

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

N/A

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

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

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations unless Architect knew of or should have reasonably known or expected said enactments or revisions;
4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
5. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
6. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or
7. Consultation concerning replacement of Work resulting from fire during construction.

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

1. Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
2. Responding to the Contractor's repeated requests for information that are not prepared in accordance with the Contract Documents or where such requests are made outside the normal and custom practice when such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
3. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
4. Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
5. To the extent the Architect's Basic Services are affected, providing Construction Phase Services sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

1. two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor

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2. four (4) visits to the site by the Architect over the duration of the Project during construction:
  - a. two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
  - b. two (2) inspections for any portion of the Work to determine final completion

*(Paragraph 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 limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within a reasonable time not less than fifteen (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.

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

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project.

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

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

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

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

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

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

§ 5.10 The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

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

*(Paragraph deleted)*

## ARTICLE 6 COST OF THE WORK

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

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

§ 6.3 In preparing estimates of the Cost of Work, the Architect, upon Owner's approval, shall be permitted to: i) include contingencies for design, bidding and price escalation; ii) determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; make reasonable adjustments in the program and scope of the Project; iii) include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work; and iv) base the Cost of Work on current area, volume or similar conceptual estimating techniques.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, 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.

*(Paragraphs deleted)*

## ARTICLE 7 COPYRIGHTS AND LICENSES

§7.1 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,

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and industry or trade specifications which are not unique to the Owner or to the Owner's business), are and shall be solely in the Owner. Subject to payment by Owner in accordance with this Agreement (unless the Owner is entitled to withhold payment in accordance with this Agreement), the Architect shall, when requested by the Owner, turn over to Owner, and 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 if and as required by and in accordance with the provisions of 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, Specifications or other materials (hereinafter "Instruments of Service") on other projects or provide the Instruments of Service to third parties or their use on other projects or (2) 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 attorneys fees and legal expenses and all interest thereon, accruing from or arising from any of the foregoing uses. Should Owner terminate the Architect after completion of the Construction Documents and make or cause to be made by other changes or modifications to the Construction Documents for this Project, Owner releases Architect from liability or claims arising from such modifications or changes and shall defend, indemnify and hold harmless Architect from and against all claims, suits, demands, losses and expenses, including reasonable attorneys fees and legal expenses and all interest thereon, accruing from or arising from such changes or modifications to the Instruments of Service from this Project.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

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

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

§ 8.1.3 Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, but only after exhausting all possible contractual or administrative remedies.

§ 8.1.4 Architect is required to notify Owner of any claim filed against Architect or Architect's insurance company arising from services performed under this Agreement within thirty (30) days of such filing, and failure to do so shall constitute a material breach of this Agreement.

§ 8.1.5 Architect acknowledges that the Owner is a local government unit and agrees that any claim made by the Architect arising out of any act or omission of any director, officer or employee of Owner, in execution or performance of this Agreement, shall be made against the Owner and not against such director, officer or employee.

Owner acknowledges that Architect is a corporation and agrees that any claim by Owner arising out of any negligent act or omission of any director, officer or employee of Architect/Engineer, in the execution or performance of this Agreement shall be made against the corporation and not such director, officer or employee, unless Architect fails to provide or maintain the insurance coverages required by this Agreement, and further provided that the obligation of Architect to pay any deductible or self-insured retention in connection with any such claim in accordance with this Agreement shall not be so limited to the corporation.

§ 8.1.6 No action shall be maintained by Architect, its successors or assigns, against Owner on any claim based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within one year of the later of: i) the termination of this Contract; or ii) final payment to Contractor.

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

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction pursuant to Article 8.

☐ Other *(Specify)*

In the event a dispute arises, the Parties may agree in writing to non-binding mediation before commencing litigation.

*(Paragraphs deleted)*

## ARTICLE 9 TERMINATION OR SUSPENSION

*(Paragraph deleted)*

§ 9.1 Unless Owner is entitled to withhold payment in accordance with this Agreement, 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 (7) days' written notice to the Owner before suspending services. Unless payment in full is received by the Architect within seven (7) days of the date of notice, the suspension shall take effect without further notice. Before resuming services, the Architect shall be paid all undisputed sums due prior to suspension.

§ 9.2 The Owner may suspend Architect's services or the Project at Owner's convenience and without cause at any time upon written notice to Architect. If the Owner suspends the Project for more than thirty (30) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's fees for the remaining services and the time schedules for the performance of 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 this Agreement or for any other reason which is the fault of the Architect.

§ 9.3 If the Owner suspends the Project for more than ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than fourteen (14) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) 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 (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and excluding overhead and profit.

§ 9.7 If the Architect is adjudged as bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Architect's insolvency, or if any provision of the bankruptcy law is invoked by or against the Architect, or if the Architect persistently or repeatedly refuses or fails (except in cases for which extension of time is provided), to perform the Services in accordance with the Agreement, then notwithstanding any other rights or remedies granted the Owner, the Owner may, without prejudice to any other right or remedy, (i) terminate the employment of the Architect and/or (ii) finish the Services by whatever method the Owner may deem expedient. In such case, the Architect shall not be entitled to receive any further payment until the Services are

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finished and the Owner may be entitled to recover and deduct from any remaining amounts due Architect all damages allowed by law.

§ 9.8 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 effective date of termination, so as to avoid any delay or increased cost of the Project.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

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

§ 10.4 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.

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

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

§ 10.7 Subject to Article 7, if the Architect or Owner receives information considered by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Furthermore, Architect or Owner shall not withhold such information if, in doing so, would violate the law or create a risk of significant harm to the public. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information considered as "confidential" or "business proprietary" by Owner.

§ 10.8 **Independent Contractor.** Architect agrees that all services and work performed under this Agreement are being performed by Architect as an independent contractor and not as an employee or agent of Owner. This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind or create an employer/employee relationship between Owner and Architect, Architect's employees, subcontractors, subcontractors' employees or any person supplied by Architect in the performance of Architect's obligations under this Agreement and does not entitle said persons to rights or benefits from Owner normally associated with an employment relationship, such as, but not limited to, civil service, retirement, personnel rules which accrue to such persons, health insurance, motor vehicle insurance, life insurance,

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workers' compensation, sick leave or any other fringe benefits. Architect and subcontractors shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and shall indemnify, hold harmless and defend Owner with respect thereto, including payment of reasonable attorney's fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state laws. Such indemnity shall be required by Architect from its subcontractors, if any, on behalf of Owner.

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

**§ 10.10 Subcontracts** The Architect shall insert into all subcontracts the paragraphs herein entitled "INSURANCE," "RETENTION OF RECORDS," and "INDEMNIFICATION."

**§ 10.11 Compliance with Laws** Architect shall comply with applicable federal and state laws and local ordinances and regulations in providing services within the scope of this Agreement, including but not limited to the following:

1. Architect shall comply with, and cause all persons providing any of the Services on its behalf to comply with, all applicable federal and state laws and governmental rules and regulations now or hereafter in effect pertaining to equal employment opportunity and discrimination in provision of the services, including the provisions of the Equal Employment Opportunity Clause. Architect specifically represents and certifies to Owner that Architect complies with all applicable provisions of the Illinois Human Rights Act and that it maintains, and shall maintain at all times during the period it is required to perform the Services, a written sexual harassment policy in full compliance with Section 2-105(A)(4) thereof.
2. 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. Architect's Proposal to the Owner seeking a contract for the performance of the architectural services for this Project was made without any connection or common interest in the profits anticipated to be derived from the Agreement by the Architect with any other person submitting proposals to the Owner for this Project. The Agreement terms are in all respects fair and the Agreement is entered into by the Architect without collusion or fraud and no official, officer or employee of the Owner has any direct or indirect financial interest in the Architect's Proposal or in the Architect.
3. The Architect certifies that it 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 Agreement between Architect and Owner, and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Architect.
4. If Architect has 25 or more employees on the date of this Agreement, Architect knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/I *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.
5. Architect hereby certifies that no individual employed or otherwise retained by Architect or any of Architect's consultants or subconsultants to perform the Services has been convicted of a crime that would make the individual ineligible to be employed by Owner in accordance with 70 ILCS 1205/8-23.

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

§ 10.13 **Notices** All notices required pursuant to this Agreement shall be sent to the attention of:

Rob Sperl  
Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
T: 630-510-4975

Engineer:  
Robert N. St. Mary  
Elara Energy Services, Inc.  
30 North Wolf Road  
2<sup>nd</sup> Floor  
Hillside, IL 60162-1605  
T: 708-236-0330

#### ARTICLE 11 COMPENSATION

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

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

Fixed Fee of Thirty-one Thousand Nine Hundred and 00/100 Dollars (\$31,900.00). Broken down as follows:

Design and Permit/Bid/Construction Documents Phase: \$24,800.00

Bidding Phase: \$1,500.00

Construction and Functional Testing Phase Services: \$5,600.00. Payment for this phase is subject to Owner's approval of these services in accordance with Section 1.1.

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

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

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

As provided in Section 11.7 of this Agreement.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect at cost, or as otherwise stated below but not before written authorization by Owner:

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

Schematic Design Phase	percent	( % )
Design Development Phase	percent	( % )

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User Notes:

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Construction Phase	Documents	percent	( %)
Bidding or Negotiation Phase		percent	( %)
Construction Phase		percent	( %)
Total Basic Compensation	one hundred	percent	100 ( %)

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

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

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

Employee or Category	Rate
Principals	\$230.00
Associates and Project Engineers	\$175.00
Senior Engineers	\$150.00
Designers and Technicians	\$115.00
Administration	\$85.00

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0%) of the expenses incurred. Reimbursable Expenses shall not exceed One Thousand Dollars (\$1,000.00) without prior written approval of Owner. Architect shall provide all supporting documentation of said Reimbursable Expenses.

*(Paragraphs deleted)*

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## § 11.10 PAYMENTS TO THE ARCHITECT

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

§ 11.10.2 Unless otherwise agreed, payments for services shall be made forty-five (45) days from the date of Architect's invoice. Any interest associated with late payment shall be governed by the applicable provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1, *et. seq.*  
(Insert rate of monthly or annual interest agreed upon.)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or Owner has disclosed in writing that the services provided fail, in Owner's opinion, to meet Owner's reasonable expectation consistent with the terms and conditions of this Agreement. Notwithstanding the foregoing, Owner may withhold amounts from the Architect's compensation in accordance with the Local Government Prompt Payment Act 50 ILCS 505/1 *et seq.*

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

§ 12.1 Owner will use reasonable efforts to require, and Architect shall provide in any Contract Documents prepared by Architect on behalf of Owner, that the Contractors responsible for construction shall purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death to the extent caused by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose act of them may be liable.

Such insurance shall provide substantially that: "The coverage afforded the additional insureds shall be primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds 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."

§ 12.2 The Architect and the Owner agree that a provision containing substantially the following language will be inserted in the Contract Documents in the interests of both parties:

"To the fullest extent by law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Owner, the Architect and their employees and consultants from and against all claims, damages, losses and expenses, including, but not limited to attorneys' fees and economic or consequential damages, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any intentional wrongful act or any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would exist as any party or person described in the Contract.

In any and all claims against the Owner or Architect or any of the employees and consultants by any employee of the Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph of the Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

Claims, damages, losses and expenses' as these words are used in the Contract shall be construed to include, but not to be limited to (1) injury or damage consequent upon the failure of or use or misuse by

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Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by any Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus consists of travel, long distance telephone and reproduction of documents."

§ 12.3 It is intended that Architect shall have no responsibility for job site safety on the Project and does not have charge of the Work. Contractor shall have full and sole authority for all safety programs and precautions in connection with the Work. When Architect is present at the site, such presence shall be only for the purpose of endeavoring to protect the Owner against any deviations or defects in the completed construction work, and Architect shall have no authority to take any action whatsoever on the site regarding safety precautions or procedures.

§ 12.4 Architect shall at its own cost promptly cure any breach of its obligations under this Agreement. Should Architect refuse or neglect to cure such breach within a reasonable time, taking into consideration the nature of the breach and its impact on the progress or the cost of the Work, after receiving reasonable notice requesting such cure from Owner, then Owner shall be entitled to cure such breach following additional notice of such intended action to Architect, and recover the cost of such cure from Architect. This commitment by Architect is in addition to and not in substitution for, any other remedy which the Owner may have at law or in equity.

§ 12.5 Architect's Basic Services shall include Services before and after issuance to Owner of the final Certificate for Payment, or in the absence of the final Certificate of Payment, before or after the date of Final Completion, made necessary by (i) failure of performance of a Contractor under any Contract for Construction, when such defects or deficiencies in the Work, or failure of performance resulted from Architect's negligence or errors or omissions in the Contract Documents which it provided for the Project or (ii) breach of the duties or obligations of the Architect under this Agreement.

§ 12.6 In the event Architect is hindered, delayed or prevented from performing its obligations under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, theft, strike, lockout, other labor problems, shortages of material or labor, failure of any governmental agency or Owner to furnish information or to approve or to disapprove Architect's work or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

#### ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

1. AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
2. AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

*(Paragraph deleted)*

3. Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*
  - a. Engineer's Proposal, dated August 11, 2015 , attached to and incorporated as part of this Agreement.
  - b. Engineer's concept design of the chiller system dated November 26, 2012, attached to and incorporated as part of this Agreement.

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

**OWNER**

**WHEATON PARK DISTRICT**

*(Row deleted)*

*(Signature)*

*(Printed name and title)*

*Exe Dir*

**ENGINEER**

**ELARA ENERGY SERVICES, INC.**

*(Signature)*

*STEVE MAZE - PRESIDENT*  
*(Printed name and title)*

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# Additions and Deletions Report for AIA<sup>®</sup> Document B101<sup>™</sup> – 2007

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 11:44:47 on 10/15/2015.

## PAGE 1

**AGREEMENT** made as of the \_\_\_\_\_ day of September in the year Two Thousand Fifteen  
(In words, indicate day, month and ~~year~~-year)

...

(Name, ~~legal status~~, address and other information)

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187

and the ~~Architect~~:Engineer

(Name, ~~legal status~~, address and other information)

Elara Energy Services, Inc.  
30 North Wolf Road  
2<sup>nd</sup> Floor  
Hillside, IL 60162-1605

For purposes of this Agreement, "Architect" shall mean "Engineer." Engineer to provide mechanical and electrical engineering services

...

Central Athletic Center New Chiller System - Installation of new chiller system to serve Owner's Central Athletic Center, 500 S. Naperville Road, Wheaton, IL, as well as a new outdoor ice rink.

## PAGE 2

Owner and Architect hereby agree and understand that Architect's obligations for the Construction Phase Services as enumerated in Article 3.6 of this Agreement are subject to separate approval by Owner's Board upon completion of the Bidding Phase of the Project. Owner may, but is under no obligation to retain Architect for the Construction Phase Services of this Project. If Owner elects to retain Architect for the Construction and Functional Testing Phase Services of this Project, Architect's fee for the Construction and Functional Testing Phase Services shall be as provided in Section 11.1 of this Agreement.

Estimated Cost of the Work is \$400,000.

...

1



1. Commencement of construction date: TBD

~~2~~ 2. Substantial Completion date: TBD

~~§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation reasonably rely on the Initial Information.~~

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§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants and advisors (Architect's consultants and advisors being hereinafter collectively referred to as Architect's "consultants") as described in this Agreement. The services to be provided or furnished by the Architect, its employees and consultants under this Agreement are sometimes hereinafter collectively referred to as the "Architect's services" or "Services".

~~§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Architect understands and acknowledges that it has been engaged by the Owner to provide Architect's Services based, in part, on the Architect's represented character, expertise, experience and qualifications in providing architectural services comparable to those to be provided under this Agreement and on projects comparable in kind and scope to this Project. The Architect's services shall be performed properly and expeditiously to permit the orderly and timely progress and proper performance both of the Architect's services and the Work, consistent with such professional skill, care and diligence and good engineering practices as are exercised by a competent engineer with experience in the design and administration of projects of comparable kind and scope to this Project and practicing architecture in the Chicago metropolitan areas (such skill, care, diligence and practices being hereinafter referred to as the "Professional Standard").~~

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. All persons connected with the Architect as an officer, employee or agent of or consultant to the Architect, who are directly in charge of the professional engineering work performed as part of Architect's services, are, and for so long as any Services shall be provided under this Agreement, shall be duly registered and licensed under and in accordance with Illinois laws regarding the practice of engineering, as applicable to this Project, and they and any other consultants selected by the Architect and providing Services with respect to the Project shall be otherwise qualified and possess the skill and competence required to perform the Services properly. The Architect accepts responsibility for the acts and omissions of its employees, agents and consultants, and their respective employees and agents.

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

~~§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost. Architect's duties as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Construction Documents authored by the Architect or its consultants or subcontractors, nor shall anything contained in this Agreement be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity for damages sustained or expense incurred because of, or arising out of, Architect's errors, omissions, or failure to perform its duties or covenants in accordance with this Agreement. The grant of various rights to the Owner under this Agreement, and/or the failure of the Owner to exercise those rights do not and shall not create any responsibility or liability in the Owner for any error or omission of the Architect in the provision of its Services. Notwithstanding this provision, the Owner shall be responsible for all design decisions directed by the Owner over the specific written contrary recommendation of the Architect.~~

§ 2.6 All agreements between the Architect and its consultants shall be in writing and shall contain such provisions as shall ensure the performance of the Architect's Services in accordance with this Agreement. 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. Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

§ 2.7 The Architect has informed the Owner that minor imperfections in the instruments of service prepared by Architect which do not adversely affect the structural integrity of the Work or the mechanical systems incorporated in the Work is typical and expected from engineers performing these types of services. The Architect shall provide such Services required for or associated with the correction of any such imperfections, including the administration of the corrective work at no cost to the Owner, as well as pay for the construction costs associated with the corrective work that is not a "betterment" to the Project for which the Owner would be responsible under applicable Illinois law. Notwithstanding the foregoing, the Parties acknowledge that minor imperfections in the instruments of service of the Architect as well as in Bid and Contract Documents prepared by persons other than the Architect may occur and the Parties agree to attempt to resolve any disputes resulting therefrom in a fair and equitable manner under the circumstances presented.

§ 2.8 The Architect shall furnish a competent and adequate staff, and contract with competent consultants as necessary for the proper administration, coordination, supervision and performance of the Architect's services. The Architect's representative shall not be changed without the consent of the Owner, unless such person leaves the employ of the Architect, in which event the substitute must first be approved in writing by the Owner which approval shall not be unreasonably withheld or delayed. The Architect agrees that the Architect will change its assistants assigned to provide the Services at the reasonable request of the Owner, if, in the Owner's reasonable opinion, based on actual instances of deficient performance, such person's performance does not equal or exceed the Professional Standard, or the acts or omissions of such person are detrimental to the timely and/or proper performance of the Architect's services or the Work; provided however that the Owner's exercise of such right or failure to exercise such right shall not affect Architect's responsibility or liability for the proper performance of the Services. The Architect accepts responsibility for the acts and omissions of its employees and consultants. The Architect shall coordinate all aspects of the Architect's services.

§ 2.9 Insurance. The Architect shall maintain the following insurance for the duration of this Agreement (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1. General Liability. Architect shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$3,000,000 for 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 a substitute form providing 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 or a substitute providing 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. 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.
2. Automobile Liability. Architect shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for 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 equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

4. General Liability

3. Workers' Compensation. Architect 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** for each accident for bodily injury by accident or for 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 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Architect waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Architect's work.
4. Professional Liability. Architect shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than **\$1,000,000** for each wrongful act arising out of the performance or failure to perform professional services and **\$2,000,000** aggregate.

#### General Insurance Provisions

##### 2. Automobile Liability

1. Evidence of Insurance. Prior to beginning work, Architect shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for thirty (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 Architect's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Architect from entering the project 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 Contract at Owner's option. Architect shall provide certified copies of all insurance policies required above within ten (10) days of Owners' 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 Architect'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 Architect 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. Architect shall cause each subcontractor employed by Architect to purchase and maintain insurance of the type specified above. When requested by the Owner, Architect shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

§ 2.10 Indemnification. To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents from and against all third party claims, damages, losses and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Architect's services, 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, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Architect, Architect's consultants and subconsultants, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except to the extent it is caused in whole or in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Architect shall similarly protect, indemnify and hold and save harmless the Owner, its

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 Architect's breach of any of its obligations under, or Architect's default of, any provision of the Contract.

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§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services, services to be provided by the Architect as described in Architect's Proposal dated August 11, 2015, and this Agreement are complimentary and supplementary and the Architect shall provide all of the services described in, or implied from, all of these documents, taken as a whole and include usual and customary mechanical and electrical engineering services. In the event of conflict between or among the provisions of the foregoing documents relative to each phase of the Project, the provisions most favorable to Owner shall control.

§ 3.1.1 The Architect shall manage the Architect's services, including any services provided by Architect's consultants, as enumerated under this Agreement, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

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

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services and any of Architect's consultant's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's and Owner's Board of Commissioner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, as determined by Owner, be exceeded by the Architect or Owner. With the Owner's written approval, the Architect shall adjust the schedule, if necessary, necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive to third parties or substitution made without the Architect's prior approval. The Architect's prior knowledge via written notification by the Owner or other written instrument provided to or prepared by the Architect, of Owner's intended directive or substitution and failure to object thereto in writing within three (3) days shall constitute the Architect's approval of such directive or substitution.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall thoroughly review the Owner's program and other information furnished by the Owner and any other information which the Architect deems necessary or advisable to determine the nature and extent of, and develop solutions to resolve, any technical or other difficulties or problems in implementing the Project and achieving successful Project completion consistent with the Owner's stated needs, goals and objectives and the Project requirements. As part of this process, the Architect will visit the Project site and become thoroughly familiar with existing conditions, including activities and uses which will continue while the Project is in progress. The Architect shall also review and ascertain governmental requirements and utilities requirements applicable to the Architect's Services and the design and construction of the Project including ascertaining timing considerations for submissions to and review by such entities. The Architect shall notify the Owner promptly in order not to adversely affect the proposed Project schedule, of (1) any inconsistencies discovered in the information and (2) any information or consulting services that may be reasonably needed for the Project. The Architect shall review and discuss with the Owner proposed site use and improvements; selection of materials; building systems and equipment; identification of long-lead items; labor availability; any special governmental or utilities requirements; and timing/scheduling issues.



The Architect shall be responsible to the Owner for any claims, damages, losses and expenses arising from the Architect's failure to follow applicable laws, codes and regulations in execution of all of Architect's services pursuant to this Agreement.

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§ 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. As part of the Design Phase, Engineer shall use the conceptual design plan Engineer prepared for Owner dated November 26, 2012.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies ~~discovered~~ in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

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

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

...

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the ~~Work~~, Work at the completion of the Design Development Phase due to any Owner approved adjustments.

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

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§ 3.4.2 The Architect shall incorporate into the Construction ~~Documents~~ Documents: a) the design requirements of governmental authorities having jurisdiction over the Project; and b) the details necessary to obtain the required permits to construct the Project.

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

documents, unless otherwise agreed, including the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

...

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids ~~or, if the Project is not required to be bid,~~ negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

...

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents, requirements, proposed Contract Documents, and any other documents as Owner deems appropriate.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by in compliance with all applicable laws by:

- ~~1~~—1. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- ~~2~~—2. distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- ~~3~~—3. organizing and conducting a pre-bid conference for prospective bidders;
- ~~4~~—4. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- ~~5~~—5. organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

...

### § 3.5.3 NEGOTIATED PROPOSALS

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

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

- ~~1~~—1. procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- ~~2~~—2. organizing and participating in selection interviews with prospective contractors; and
- ~~3~~—3. participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6 CONSTRUCTION AND FUNCTIONAL TESTING PHASE SERVICES

Architect's obligations under this Section 3.6 are subject to Section 1.1 of this Agreement. In the event Architect does not provide any Construction and Functional Testing Phase Services, Architect shall not be paid that portion of Architect's fee for these services as specified in Section 11.1.

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, these modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. Construction as amended by Owner.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, ~~nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.~~ Architect shall be responsible for evaluating the Work in accordance with 3.6.2.1. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates ~~on one year from~~ the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 Duties, responsibilities and limitations of the Architect under this Article 3.6 shall not be restricted, modified or extended without prior written approval of Owner.

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§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to ~~become generally familiar with~~ supervise the progress and quality of the ~~portion of the Work completed, and to determine, in general, if the Work observed Work, and to determine if the Work~~ 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. After each site visit, the Architect shall provide the Owner a written report about the progress and quality of the portion of the Work completed, Work, and report to the Owner (1) known any deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed any defects and deficiencies in the Work.~~

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

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

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

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

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such ~~amounts, amounts for final approval by Owner.~~ The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the

data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, ~~the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents.~~ Architect shall only issue a certificate of final payment to Contractor upon Contractor's submittal of all warranties and guarantees to Architect as required by the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

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

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

...

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

~~§ 3.6.4.2 In accordance with the Architect approved submittal schedule, the~~ 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. Samples for the purpose of ensuring that all submittals reflect accurate details such as quantities and dimensions and that the Work will be completed in compliance with the Contract Documents.~~ The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

~~§ 3.6.4.4 Subject to the provisions of Section 4.3, the~~ The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall ~~include, at a minimum, a detailed~~ include a written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness ~~promptness so as to not cause delay in the Work or in the activities of Owner or Contractor.~~ If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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



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

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

...

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

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. Upon completion of the installation of the new system, Engineer shall provide functional testing services of the new system in accordance with Engineer's Proposal. The presence of Owner shall neither be construed as approval of the Work, nor as the waiver of any rights of the Owner against the Architect or Contractor.

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

...

Additional Services	Responsibility <del>(Architect, Owner</del> <del>or</del> <del>Not</del> <del>Provided)</del> (Archite ct or Owner)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
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§ 4.1.1 Programming <del>(B202™-2009)</del>		
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...

§ 4.1.6 Building Information Modeling <del>(E202™-2008)</del> information modeling		
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§ 4.1.8 Landscapedesign		
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§ 4.1.12 On-site Project Representation <del>(B207™-2008)</del> Additional On-site project representation		
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...

§ 4.1.14 <del>As-Designed Record</del> <u>As-designed record</u> drawings		
§ 4.1.15 <del>As-Constructed Record</del> <u>As-constructed record</u> drawings		

...

§ 4.1.24 LEED® (B214™ 2012)(B214™-2007)	Certification	
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...

§ 4.1.27 Furniture, <del>Furnishings,</del> <u>Finishings,</u> and Equipment Design (B253™-2007)		
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...

N/A

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

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- ~~1.~~ 1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- ~~2.~~ 2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- ~~3.~~ 3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official ~~interpretations;~~ interpretations unless Architect knew of or should have reasonably known or expected said enactments or revisions;
- ~~4.~~ 4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- ~~5.~~ 5. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- ~~6.~~ Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- ~~7.~~ Preparation for, and attendance at, a public presentation, meeting or hearing;
- ~~8.~~ 6. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or
- ~~9.~~ Evaluation of the qualifications of bidders or persons providing proposals;
- ~~10.~~ 7. Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- ~~11.~~ Assistance to the Initial Decision Maker, if other than the Architect, during construction.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall ~~provide the following Additional Services, notify the Owner with reasonable promptness,~~ promptly notify Owner if any of the following Additional Services are required, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the

Owner shall have no further obligation to compensate the Architect for those ~~services~~ services. Architect shall provide the following Additional Services upon Owner's approval:

- ~~.4~~ ~~1.~~ Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- ~~.2~~ ~~2.~~ Responding to the Contractor's repeated requests for information that are not prepared in accordance with the Contract Documents or where such requests are made outside the normal and custom practice when such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- ~~.3~~
- ~~3.~~ Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- ~~.4~~ ~~Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- ~~.5~~ ~~4.~~ Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- ~~.6~~
- ~~5.~~ To the extent the Architect's Basic Services are affected, providing Construction Phase Services ~~60~~ sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

...

~~.1~~ ~~( )~~

- ~~1.~~ two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor

~~.2~~ ~~( )~~

- ~~2.~~ four (4) visits to the site by the Architect over the duration of the Project during ~~construction~~ construction:

~~.3~~ ~~( )~~ a. two (2) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

~~.4~~ ~~( )~~ b. two (2) inspections for any portion of the Work to determine final completion

~~§ 4.3.4 If the services covered by this Agreement have not been completed within ( ) 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 limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within ~~15~~ a reasonable time not less than fifteen (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~~ evaluate.

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

...

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

...

~~§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall notify the Architect of any direct communications that may affect the Architect's services.~~

~~§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.~~

~~§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction, access to the Project site prior to commencement of the Work and shall request the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.~~

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

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

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

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

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, 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. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

#### ARTICLE 7 ~~COPYRIGHTS AND LICENSES~~

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

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

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

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

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

Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

§7.1 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), are and shall be solely in the Owner. Subject to payment by Owner in accordance with this Agreement (unless the Owner is entitled to withhold payment in accordance with this Agreement), the Architect shall, when requested by the Owner, turn over to Owner, and 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 if and as required by and in accordance with the provisions of 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, Specifications or other materials (hereinafter "Instruments of Service") on other projects or provide the Instruments of Service to third parties or their use on other projects or (2) 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 attorneys fees and legal expenses and all interest thereon, accruing from or arising from any of the foregoing uses. Should Owner terminate the Architect after completion of the Construction Documents and make or cause to be made by other changes or modifications to the Construction Documents for this Project, Owner releases Architect from liability or claims arising from such modifications or changes and shall defend, indemnify and hold harmless Architect from and against all claims, suits, demands, losses and expenses, including reasonable attorneys fees and legal expenses and all interest thereon, accruing from or arising from such changes or modifications to the Instruments of Service from this Project.

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

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

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, but only after exhausting all possible contractual or administrative remedies.



§ 8.1.4 Architect is required to notify Owner of any claim filed against Architect or Architect's insurance company arising from services performed under this Agreement within thirty (30) days of such filing, and failure to do so shall constitute a material breach of this Agreement.

§ 8.1.5 Architect acknowledges that the Owner is a local government unit and agrees that any claim made by the Architect arising out of any act or omission of any director, officer or employee of Owner, in execution or performance of this Agreement, shall be made against the Owner and not against such director, officer or employee.

Owner acknowledges that Architect is a corporation and agrees that any claim by Owner arising out of any negligent act or omission of any director, officer or employee of Architect/Engineer, in the execution or performance of this Agreement shall be made against the corporation and not such director, officer or employee, unless Architect fails to provide or maintain the insurance coverages required by this Agreement, and further provided that the obligation of Architect to pay any deductible or self-insured retention in connection with any such claim in accordance with this Agreement shall not be so limited to the corporation.

§ 8.1.6 No action shall be maintained by Architect, its successors or assigns, against Owner on any claim based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within one year of the later of: i) the termination of this Contract; or ii) final payment to Contractor.

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

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction pursuant to Article 8.

☐ Other (Specify)

In the event a dispute arises, the Parties may agree in writing to non-binding mediation before commencing litigation.

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

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

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

☐ — Arbitration pursuant to Section 8.3 of this Agreement

☐ — Litigation in a court of competent jurisdiction

☐ — Other (Specify)

### § 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

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

§ 9.1 Unless Owner is entitled to withhold payment in accordance with this Agreement, 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 (7) days' written notice to the Owner before suspending services. Unless payment in full is received by the Architect within seven (7) days of the date of notice, the suspension shall take effect without further notice. Before resuming services, the Architect shall be paid all undisputed sums due prior to suspension.

§ 9.2 If the Owner suspends the Project, The Owner may suspend Architect's services or the Project at Owner's convenience and without cause at any time upon written notice to Architect. If the Owner suspends the Project for more than thirty (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 fees for the remaining services and the time schedules shall be equitably adjusted for the performance of 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 this 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~~ ninety (90) consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than ~~seven~~ fourteen (14) days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) 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 (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and ~~all Termination Expenses as defined in Section 9.7, excluding overhead and profit.~~

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. If the Architect is adjudged as bankrupt, or makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Architect's insolvency, or if any provision of the bankruptcy law is invoked by or against the Architect, or if the Architect persistently or repeatedly refuses or fails (except in cases for which extension of time is provided), to perform the Services in accordance with the Agreement, then notwithstanding any other rights or remedies granted the Owner, the Owner may, without prejudice to any other right or remedy, (i) terminate the employment of the Architect and/or (ii) finish the Services by whatever method the Owner may deem expedient. In such case, the Architect shall not be entitled to receive any further payment until the Services are finished and the Owner may be entitled to recover and deduct from any remaining amounts due Architect all damages allowed by law.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9. 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 effective date of termination, so as to avoid any delay or increased cost of the Project.

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§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3. Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.~~

~~§ 10.3 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 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least fourteen (14) days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least fourteen (14) days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.~~

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

~~§ 10.5 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. Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Architect shall report to Owner any hazardous materials discovered by Architect or reasonably should have discovered by Architect at the Project site.~~

~~§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.~~

~~§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. Subject to Article 7, if the Architect or Owner receives information considered by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. Furthermore, Architect or Owner shall not withhold such information if, in doing so, would violate the law or create a risk of significant harm to the public. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information considered as "confidential" or "business proprietary" by Owner.~~

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information. **Independent Contractor.** Architect agrees that all services and work performed under this Agreement are being performed by Architect as an independent contractor and not as an employee or agent of Owner. This Agreement is not intended to constitute, create, give rise to or otherwise recognize a joint venture agreement or relationship, partnership or formal business organization of any kind or create an employer/employee relationship between Owner and Architect, Architect's employees, subcontractors, subcontractors' employees or any person supplied by Architect in the performance of Architect's obligations under this Agreement and does not entitle said persons to rights or benefits from Owner normally associated with an employment relationship, such as, but not limited to, civil service, retirement, personnel rules which accrue to such persons, health insurance, motor vehicle insurance, life insurance, workers' compensation, sick leave or any other fringe benefits. Architect and subcontractors shall have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employee benefits and all taxes and premiums appurtenant thereto concerning such persons and shall indemnify, hold harmless and defend Owner with respect thereto, including payment of reasonable attorney's fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state laws. Such indemnity shall be required by Architect from its subcontractors, if any, on behalf of Owner.

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

§ 10.10 Subcontracts The Architect shall insert into all subcontracts the paragraphs herein entitled "INSURANCE," "RETENTION OF RECORDS," and "INDEMNIFICATION."

§ 10.11 Compliance with Laws Architect shall comply with applicable federal and state laws and local ordinances and regulations in providing services within the scope of this Agreement, including but not limited to the following:

1. Architect shall comply with, and cause all persons providing any of the Services on its behalf to comply with, all applicable federal and state laws and governmental rules and regulations now or hereafter in effect pertaining to equal employment opportunity and discrimination in provision of the services, including the provisions of the Equal Employment Opportunity Clause. Architect specifically represents and certifies to Owner that Architect complies with all applicable provisions of the Illinois Human Rights Act and that it maintains, and shall maintain at all times during the period it is required to perform the Services, a written sexual harassment policy in full compliance with Section 2-105(A)(4) thereof.
2. 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. Architect's Proposal to the Owner seeking a contract for the performance of the architectural services for this Project was made without any connection or common interest in the profits anticipated to be derived from the Agreement by the Architect with any other person submitting proposals to the Owner for this Project. The Agreement terms are in all respects fair and the Agreement is entered into by the Architect without collusion or fraud and no official, officer or employee of the Owner has any direct or indirect financial interest in the Architect's Proposal or in the Architect.
3. The Architect certifies that it 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 Agreement between Architect

and Owner, and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Architect.

4. If Architect has 25 or more employees on the date 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.
5. Architect hereby certifies that no individual employed or otherwise retained by Architect or any of Architect's consultants or subconsultants to perform the Services has been convicted of a crime that would make the individual ineligible to be employed by Owner in accordance with 70 ILCS 1205/8-23.

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

§ 10.13 Notices All notices required pursuant to this Agreement shall be sent to the attention of:

Rob Sperl  
Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
T: 630-510-4975

Engineer:  
Robert N. St. Mary  
Elara Energy Services, Inc.  
30 North Wolf Road  
2<sup>nd</sup> Floor  
Hillside, IL 60162-1605  
T: 708-236-0330

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Fixed Fee of Thirty-one Thousand Nine Hundred and 00/100 Dollars (\$31,900.00). Broken down as follows:

Design and Permit/Bid/Construction Documents Phase: \$24,800.00

Bidding Phase: \$1,500.00

Construction and Functional Testing Phase Services: \$5,600.00. Payment for this phase is subject to Owner's approval of these services in accordance with Section 1.1.

...

N/A

...

As provided in Section 11.7 of this Agreement.

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

at cost, or as otherwise stated below but not before written authorization by Owner:

...

Schematic Design Phase	percent (	(%)
Design Development Phase	percent (	(%)
Construction Documents Phase	percent (	(%)
Bidding or Negotiation Phase	percent (	(%)
Construction Phase	percent (	(%)

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Total Basic Compensation	one hundred	percent (	100	(%)
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§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are authorized and properly performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work prepared by the Construction Manager for such portions of the Project. ~~The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.~~

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. ~~The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.~~

...

<u>Principals</u>	<u>\$230.00</u>
<u>Associates and Project Engineers</u>	<u>\$175.00</u>
<u>Senior Engineers</u>	<u>\$150.00</u>
<u>Designers and Technicians</u>	<u>\$115.00</u>
<u>Administration</u>	<u>\$85.00</u>

...

- .1 —
1. Transportation and authorized out-of-town travel and subsistence;
  2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
  3. Fees paid for securing approval of authorities having jurisdiction over the Project;
  4. Printing, reproductions, plots, standard form documents;
  5. Postage, handling and delivery;
  6. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
  7. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
  8. ~~Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;~~
  9. ~~All taxes levied on professional services and on reimbursable expenses;~~
  10. 8. Site office expenses; and



~~.44—9.~~ Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ~~percent (—%) of the expenses incurred~~ zero percent (0%) of the expenses incurred. Reimbursable Expenses shall not exceed One Thousand Dollars (\$1,000.00) without prior written approval of Owner. Architect shall provide all supporting documentation of said Reimbursable Expenses.

...

**~~§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~**

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

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

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. ~~Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid (—) 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.~~ forty-five (45) days from the date of Architect's invoice. Any interest associated with late payment shall be governed by the applicable provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1, *et. seq.*  
(Insert rate of monthly or annual interest agreed upon.)

—%

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§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or ~~has been found liable for the amounts in a binding dispute resolution proceeding.~~ Owner has disclosed in writing that the services provided fail, in Owner's opinion, to meet Owner's reasonable expectation consistent with the terms and conditions of this Agreement. Notwithstanding the foregoing, Owner may withhold amounts from the Architect's compensation in accordance with the Local Government Prompt Payment Act 50 ILCS 505/1 *et seq.*

...

§ 12.1 Owner will use reasonable efforts to require, and Architect shall provide in any Contract Documents prepared by Architect on behalf of Owner, that the Contractors responsible for construction shall purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death to the extent caused by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose act of them may be liable.

Such insurance shall provide substantially that: "The coverage afforded the additional insureds shall be primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds 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."

§ 12.2 The Architect and the Owner agree that a provision containing substantially the following language will be inserted in the Contract Documents in the interests of both parties:

"To the fullest extent by law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Owner, the Architect and their employees and consultants from and against all claims, damages, losses and expenses, including, but not limited to attorneys' fees and economic or consequential damages, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any intentional wrongful act or any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would exist as any party or person described in the Contract.

In any and all claims against the Owner or Architect or any of the employees and consultants by any employee of the Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph of the Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

Claims, damages, losses and expenses' as these words are used in the Contract shall be construed to include, but not to limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by any Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus consists of travel, long distance telephone and reproduction of documents."

§ 12.3 It is intended that Architect shall have no responsibility for job site safety on the Project and does not have charge of the Work. Contractor shall have full and sole authority for all safety programs and precautions in connection with the Work. When Architect is present at the site, such presence shall be only for the purpose of endeavoring to protect the Owner against any deviations or defects in the completed construction work, and Architect shall have no authority to take any action whatsoever on the site regarding safety precautions or procedures.

§ 12.4 Architect shall at its own cost promptly cure any breach of its obligations under this Agreement. Should Architect refuse or neglect to cure such breach within a reasonable time, taking into consideration the nature of the breach and its impact on the progress or the cost of the Work, after receiving reasonable notice requesting such cure from Owner, then Owner shall be entitled to cure such breach following additional notice of such intended action to Architect, and recover the cost of such cure from Architect. This commitment by Architect is in addition to and not in substitution for, any other remedy which the Owner may have at law or in equity.

§ 12.5 Architect's Basic Services shall include Services before and after issuance to Owner of the final Certificate for Payment, or in the absence of the final Certificate of Payment, before or after the date of Final Completion, made necessary by (i) failure of performance of a Contractor under any Contract for Construction, when such defects or deficiencies in the Work, or failure of performance resulted from Architect's negligence or errors or omissions in the Contract Documents which it provided for the Project or (ii) breach of the duties or obligations of the Architect under this Agreement.

§ 12.6 In the event Architect is hindered, delayed or prevented from performing its obligations under this Agreement as a result of any fire, flood, landslide, tornado or other act of God, theft, strike, lockout, other labor problems, shortages of material or labor, failure of any governmental agency or Owner to furnish information or to approve or to disapprove Architect's work or any other cause beyond the reasonable control of Architect, the time for completion of Architect's work shall be extended by the period of resulting delay.

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.4

1. AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- ~~2~~—2. AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

~~3~~—3. Other documents:

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

a. Engineer's Proposal, dated August 11, 2015 , attached to and incorporated as part of this Agreement.

b. Engineer's concept design of the chiller system dated November 26, 2012, attached to and incorporated as part of this Agreement.

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OWNER

WHEATON PARK DISTRICT

OWNER

ENGINEER

ELARA ENERGY SERVICES, INC.

ARCHITECT



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Nicole L. Karas, 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 11:44:47 on 10/15/2015 under Order No. 0915487018\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Nicole L. Karas  
(Signed)

Attorney  
(Title)

October 15, 2015  
(Dated)