

AIA® Document B104™ – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the day of in the year Two Thousand Fifteen
(In words, indicate day, month and year.)

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

Cosley Foundation, Inc.
102 E. Wesley Street
Wheaton, IL 60187

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

Torre Design Consortium, Ltd., A Professional Corporation
5005 Magazine Street
New Orleans, LA 70115
Tel: 504-899-2932
Fax: 504-897-5088

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

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Comprehensive Master Planning services for the Cosley Zoo, a 7.91 acre facility owned by the Wheaton Park District and located at 1356 North Gary Avenue, Wheaton, IL 60187 as described in more detailed in the Cosley Zoo's Request for Proposals for Consultant Services for a Comprehensive Master Plan for Cosley Zoo dated September, 2014, attached to and incorporated as part of this Agreement as **Exhibit A** ("RFP") and Torre Design Consortium, Ltd's Proposal, attached to and incorporated as part of this Agreement as **Exhibit B** ("Architect's Proposal").

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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ARTICLE 1 INITIAL INFORMATION

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

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

Architect will provide zoological Master Planning services for the Cosley Zoo as described in more detail in the RFP and Architect's Proposal. The final Master Plan shall be a comprehensive plan that includes a Strategic Business Plan and addresses the zoo's development for the next 10 years. The scope of Architect's services includes, but is not limited to: site investigation and analysis, exhibit planning, site facilities master planning, cost estimation and implementation strategies, prioritization and phasing of Master Plan projects, meeting with zoo staff and other stakeholders for feedback and to discuss plan alternatives, and presentation of final plan(s) to stakeholders and all other services as detailed in the RFP, Architect's Proposal and this Agreement. The Master Plan shall address criteria that includes, but is not limited to the following: exhibits/animal care, employee amenities, visitor amenities, revenue/financial strategies, interpretive programs, infrastructure, and environmentally responsible design alternatives and sustainability concepts. The final Master Plan shall also incorporate the planning/designs necessary to: a) meet the Association of Zoo and Aquariums' (AZA) standards and certifications; and b) comply with all applicable local, state, federal requirements, codes and standards, including but not limited to ADA requirements, codes and standards and the US Department of Agriculture's requirements, codes and standards.

Architect's Master Planning services will be completed in four (4) design workshops with the Owner, Wheaton Park District' Board of Park Commissioners, Cosley Zoo's staff, and Zoological Society members. Architect's Services shall be completed in 11 Tasks as detailed in Exhibit B of Architect's Proposal and in accordance with the schedule detailed in Exhibit A of Architect's Proposal. The goal is to create the best zoo layout for facility success within the existing zoo area and potential expansion acreage.

Architect's approved consultants include: Schultz and Williams (economic consultant)

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants and advisors (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, consistent with such professional skill, care and diligence and good architectural practices as are exercised by a competent architect 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"). The foregoing statements of Owner's reliance on certain representations made by the Architect and the manner in which the Architect shall perform its services is not intended as a "warranty" of performance, but rather is an articulation of the professional standard of care in accordance with which the proper performance of the Architect's services under this Agreement shall be determined, unless a stricter standard of performance is specifically stated in the Agreement. The Architect accepts the relationship of trust and confidence established between it and the Owner by the terms of this Agreement.

§2.3 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 architectural or 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 architecture and 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 Nothing contained in this Agreement shall be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity for damages sustained or expenses incurred because of, or arising out of, Architect's negligent 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 omission of the Architect in the provision of its Services.

§ 2.5 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 of the Wheaton Park District, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

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

§2.7 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 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; 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.

§2.8 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 shall constitute the Architect's approval of such directive or substitution.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The services to be provided by the Architect as described in the Owner's RFP, Architect's Proposal, 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. The RFP and the Architect's Proposal are incorporated by reference in, and made a part of this Agreement. In the event of conflict between or among the provisions of the foregoing documents, the provisions most favorable to Owner shall control.

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

§ 3.1.2 The Architect and Architect's consultants shall provide the Services in accordance with the Project Schedule set forth in Exhibit A of Architect's Proposal, which may be adjusted as the Project proceeds as hereinafter provided, and shall include reasonable allowances for periods of time required for the Owner's review 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, 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.

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

§ 3.1.4 The Owner reserves the right to let other contracts for professional services in connection with the Project in addition to the Services of the Architect. The Architect shall reasonably cooperate with any other consultants retained by the Owner or the Wheaton Park District and shall properly coordinate the design of those items to be designed by the Architect and the Services to be provided by the Architect with those items being designed and the services being provided by other consultants. To allow unimpeded and proper design and construction of the Project and related areas the Architect shall reasonably coordinate the Architect's activities and those of its consultants with any separate consultant employed by the Owner or the Wheaton Park District. The Owner shall require its other consultants to reasonably cooperate and coordinate their activities and services with those of the Architect and its consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in the services or information provided by the Architect or by the Owner or the Owner's consultants.

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

§ 3.2 DESIGN PHASE SERVICES

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

§ 3.2.2 Based on a thorough review of the initial information provided to and obtained by the Architect and analysis of the functional and organizational relationships, requirements and objectives for the Project, the Architect shall prepare a preliminary evaluation of, and shall discuss with the Owner, the Owner's program, schedule, budget for the Cost of the Work, Project site, AZA standards and requirements for accreditation, all applicable federal, state and local zoning and building laws, statutes, ordinances, codes, rules, regulations, orders, and other legal requirements relating to the design, construction, use and occupancy of the Project, utility requirements, Project site considerations, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches and sustainability concepts. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner a preliminary estimate of the Cost of the Work.

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

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

§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES –Article 3.3 Does not apply to this Agreement; Architect only to provide Master Planning Services

(Paragraphs deleted)

§ 3.4 CONSTRUCTION PHASE SERVICES – Article 3.4 Does not apply to this Agreement; Architect only to provide Master Planning Services

(Paragraphs deleted)

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services must be approved in advance by Owner in writing and may include civil engineering, telecommunications/data, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

(Insert a description of each Additional Service the Architect shall provide, if not further described in an exhibit attached to this document.)

NA

§ 4.2 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

§ 4.2.1 The Architect has included in Basic Services four (4) site visits over the duration of the Project during the master planning services. The Architect shall conduct site visits in excess of that amount as an Additional Service at the Owner's request.

§ 4.2.2 Intentionally omitted.

(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 any known limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate.

§ 5.2 Intentionally omitted.

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

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 If applicable, 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.

(Paragraphs deleted)

ARTICLE 6 COST OF THE WORK -- Article 6 only applies to Master Plan level only

§ 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, and reasonable overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work resulting from Architect's error and omissions or other costs that are the responsibility of the Owner.

§ 6.2 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. Said adjustments shall only be made upon Owner's review and approval of the same.

(Paragraphs deleted)

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

(Paragraphs deleted)

§7.2 Submission or distribution of documents 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 Owner's or Architect's reserved rights.

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.

§ 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 the 18th Judicial Circuit, County of DuPage, 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.

§ 8.2 DISPUTE RESOLUTION

Unless otherwise agreed to by the Parties in writing at the time of the dispute, 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.)

☒ Litigation in a court of competent jurisdiction

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

(Paragraph deleted)

§9.1 This Agreement may be terminated by either party 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.

§ 9.2 The Owner may suspend the Architect's Services or the Project at the Owner's convenience and without cause at any time upon written notice to the Architect. If the Project or the Architect's Services are suspended by the Owner

for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's fees for the remaining services and the time schedules for the performance of the Architect's services shall be equitably adjusted, if and as appropriate given the stage of the Project at the time of suspension and resumption, and reason for the suspension. No adjustment shall be made if the suspension is attributable to the Architect's failure to perform the Services in accordance with this Agreement, for breach by the Architect of any provision of the Agreement, or for any other reason which is the fault of the Architect.

§ 9.3 Except as otherwise provided in Articles 11 or 12 of 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 days' written notice to the Owner before suspending services. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. 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. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

(Paragraph deleted)

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

§ 9.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed in accordance with this Agreement prior to termination, pursuant to Article 11, less the aggregate of previous payments made to the Architect together with Reimbursable Expenses then due.

(Paragraphs deleted)

§ 9.6 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 as provided by law deduct from any remaining amounts due Architect all damages allowed by law,.

§ 9.7 Promptly upon the termination of this Agreement or the Architect's Services and payment in full of all outstanding invoices received from the Architect and not in dispute, the Architect shall deliver to the Owner copies of all documents prepared by Architect in the performance of its Services under this Agreement, including without limitation all drawings and specifications, and all models prepared by the Architect for the Project prior to the effect date of termination, so as to avoid any delay or increased cost of the Project.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 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.

§ 10.2 The Owner reserves the sole right to release all Project information, as well as to time its release, form and content. This requirement shall survive the expiration of the Contract Documents. Notwithstanding the foregoing, the Owner shall not withhold permission unreasonably for the Architect to release general promotional information concerning the Project, provided that such information shall be reviewed and approved in advance in writing by the Owner. The foregoing shall not be deemed to preclude the Architect from (i) including the Owner's name in a list of

former clients in specific proposals to prospective clients or (ii) listing the Owner's name or a Project in the Architect's internal publications.

§ 10.3 This Agreement represents the entire and integrated agreement between the Owner and 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. This Agreement shall be governed by the law of Illinois.

§ 10.4 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.

(Paragraphs deleted)

ARTICLE 11 COMPENSATION

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

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

\$67,000.00 total; See Exhibit A of Architect's Proposal for the breakdown of fees by task.

See Section 11.8.2 for Reimbursable Expenses.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal or otherwise by a separate lump sum mutually agreed to by Owner and Architect. Architect shall not provide any Additional Services without prior written approval of Owner.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

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

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal

§ 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 twenty percent (20 %). Additionally:

Architect shall submit copies of all invoices from Architect's consultants to Owner prior to Owner's payment of said services. Architect shall not provide any Additional Services without prior written approval of 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: NA

(Table deleted)

§ 11.6 Intentionally omitted.

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

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

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal

Employee or Category

Rate

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project provided that Architect shall first notify Owner of the nature and the amount of such fees and the deadline for payment of the same in sufficient advance of such deadline and must afford Owner the opportunity to obtain a complete or partial waiver of same or to pay same directly;
- .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;

and

(Paragraph deleted)

- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual and necessary expenses incurred by the Architect and the Architect's consultants. Reimbursable Expenses shall not exceed Eight Thousand Dollars (\$8,000.00) without prior written approval of Owner. Architect shall provide all supporting documentation of said Reimbursable Expenses.

§ 11.9

(Paragraphs deleted)

Intentionally omitted.

§ 11.10 PAYMENTS TO THE ARCHITECT

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

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

(Paragraphs deleted)

1.5% monthly

(Paragraphs deleted)

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows: **§12.1** In the event Architect breaches its obligations under this Agreement and Owner does not elect to terminate this Agreement due to said breach in accordance with Article 9, 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.

§12.2 Architect shall procure, at no expense to Owner, the insurance coverages described in **Exhibit C**, it being

understood that the cost of such coverage is already included in the Architect's compensation for Basic and Additional Services.

§12.3 Architect accepts full responsibility for the maintenance and payment of all premiums on workmen's compensation insurance and for all other sums becoming due for unemployment insurance, health insurance, old age pensions and annuities now or hereinafter required by any state or federal government, with respect to any persons employed by the Architect for performance of services pursuant to this Agreement. Architect shall also maintain at its own cost and expense policies of insurance against all liability arising out of the negligent errors or omissions of Architect, its agents and employees with respect to the Project. Architect shall cause its consultants likewise to maintain such insurance with respect to services performed by them for the Project.

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

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

However, Owner shall make payments of all undisputed amounts in accordance with the terms of this Agreement.

§12.5 Certifications

- .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 or the Wheaton Park District has any direct or indirect financial interest in the Architect's Proposal or in the Architect.
- .3 The Architect certifies that it is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested.
- .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 The Architect represents that to the best of his knowledge no person employed or engaged by it who has been or will be assigned to work at the Project site has been convicted of any criminal or drug offenses listed in Section 8-23(c) of the Park District Code [(70 ILCS 1205/8-2(c))].

.6 Architect hereby understands and agrees: a) that because the Cosley Zoo is operated by the Wheaton Park District, an Illinois unit of local government, all documents associated with this Project are subject to disclosure pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et. seq.*) (FOIA); b) Architect shall comply with the requirements and provisions of the FOIA and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Architect shall within three (3) business days of said request, turn over to the FOIA Officer any record in the possession of the Architect that is deemed a public record under FOIA.

§12.6 Architect shall indemnify and hold harmless Owner as follows:

To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner, the Wheaton Park District, and their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from Architect's or Architect's consultant's performance of the 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, any subconsultant, 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, the Wheaton Park District and their 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.

§12.7 The Wheaton Park District, as owner of the Cosley Zoo, is the intended third party beneficiary of this Agreement.

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 incorporates the following documents listed below:

(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

Owner's RFP, dated September 2014, attached to and incorporated as part of this Agreement as **Exhibit A**.

Architect's Proposal, attached to and incorporated as part of this Agreement as **Exhibit B**.

Insurance Requirements, attached to and incorporated as part of this Agreement as **Exhibit C**.

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

COSLEY FOUNDATION, INC.

OWNER

**TORRE DESIGN CONSORTIUM, LTD, A
PROFESSIONAL CORPPORATION**

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Init.

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 15:05:06 on 01/20/2015 under Order No. 2899074363_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 B104™ – 2007, Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Nicole Karas
(Signed) N.C.

Attorney
(Title)

1-20-15
(Dated)

Additions and Deletions Report for AIA[®] Document B104[™] – 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 15:05:06 on 01/20/2015.

PAGE 1

AGREEMENT made as of the day of in the year Two Thousand Fifteen

...

Cosley Foundation, Inc.
102 E. Wesley Street
Wheaton, IL 60187

...

Torre Design Consortium, Ltd., A Professional Corporation
5005 Magazine Street
New Orleans, LA 70115
Tel: 504-899-2932
Fax: 504-897-5088

...

Comprehensive Master Planning services for the Cosley Zoo, a 7.91 acre facility owned by the Wheaton Park District and located at 1356 North Gary Avenue, Wheaton, IL 60187 as described in more detailed in the Cosley Zoo's Request for Proposals for Consultant Services for a Comprehensive Master Plan for Cosley Zoo dated September, 2014, attached to and incorporated as part of this Agreement as **Exhibit A** ("RFP") and Torre Design Consortium, Ltd's Proposal, attached to and incorporated as part of this Agreement as **Exhibit B** ("Architect's Proposal").

PAGE 2

Architect will provide zoological Master Planning services for the Cosley Zoo as described in more detail in the RFP and Architect's Proposal. The final Master Plan shall be a comprehensive plan that includes a Strategic Business Plan and addresses the zoo's development for the next 10 years. The scope of Architect's services includes, but is not limited to: site investigation and analysis, exhibit planning, site facilities master planning, cost estimation and implementation strategies, prioritization and phasing of Master Plan projects, meeting with zoo staff and other stakeholders for feedback and to discuss plan alternatives, and presentation of final plan(s) to stakeholders and all other services as detailed in the RFP, Architect's Proposal and this Agreement. The Master Plan shall address criteria that includes, but is not limited to the following: exhibits/animal care, employee amenities, visitor amenities, revenue/financial strategies, interpretive programs, infrastructure, and environmentally responsible design alternatives and sustainability concepts. The final Master Plan shall also incorporate the planning/designs necessary to: a) meet the Association of Zoo and Aquariums' (AZA) standards and certifications; and b) comply with all applicable local, state, federal requirements, codes and standards, including but not limited to ADA requirements, codes and standards and the US Department of Agriculture's requirements, codes and standards.

Architect's Master Planning services will be completed in four (4) design workshops with the Owner, Wheaton Park District' Board of Park Commissioners, Cosley Zoo's staff, and Zoological Society members. Architect's Services shall be completed in 11 Tasks as detailed in Exhibit B of Architect's Proposal and in accordance with the schedule detailed in Exhibit A of Architect's Proposal. The goal is to create the best zoo layout for facility success within the existing zoo area and potential expansion acreage.

Architect's approved consultants include: Schultz and Williams (economic consultant)

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

PAGE 3

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

§ 2.1 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, consistent with such professional skill, care and diligence and good architectural practices as are exercised by a competent architect 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"). The foregoing statements of Owner's reliance on certain representations made by the Architect and the manner in which the Architect shall perform its services is not intended as a "warranty" of performance, but rather is an articulation of the professional standard of care in accordance with which the proper performance of the Architect's services under this Agreement shall be determined, unless a stricter standard of performance is specifically stated in the Agreement. The Architect accepts the relationship of trust and confidence established between it and the Owner by the terms of this Agreement.

§2.3 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 architectural or 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 architecture and 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 Nothing contained in this Agreement shall be construed as a limitation on, or a waiver of, any remedies which the Owner may have at law or in equity for damages sustained or expenses incurred because of, or arising out of, Architect's negligent 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 omission of the Architect in the provision of its Services.

§ 2.5 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 of the Wheaton Park District, provided the Owner has timely paid the Architect for the consultants' scope of work in accordance with this Agreement. Architect will provide Owner releases and waivers of lien from Architect and Architect's consultants and subconsultants in the performance of its Services.

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

§ 2.7 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 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; 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.

§ 2.8 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 shall constitute the Architect's approval of such directive or substitution.

PAGE 4

§ 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 to be provided by the Architect as described in the Owner's RFP, Architect's Proposal, 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. The RFP and the Architect's Proposal are incorporated by reference in, and made a part of this Agreement. In the event of conflict between or among the provisions of the foregoing documents, the provisions most favorable to Owner shall control.

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

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The Architect and Architect's consultants shall provide the Services in accordance with the Project Schedule set forth in Exhibit A of Architect's Proposal, which may be adjusted as the Project proceeds as hereinafter provided, and shall include reasonable allowances for periods of time required for the Owner's review 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, 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 Owner reserves the right to let other contracts for professional services in connection with the Project in addition to the Services of the Architect. The Architect shall reasonably cooperate with any other consultants retained by the Owner or the Wheaton Park District and shall properly coordinate the design of those items to be designed by

the Architect and the Services to be provided by the Architect with those items being designed and the services being provided by other consultants. To allow unimpeded and proper design and construction of the Project and related areas the Architect shall reasonably coordinate the Architect's activities and those of its consultants with any separate consultant employed by the Owner or the Wheaton Park District. The Owner shall require its other consultants to reasonably cooperate and coordinate their activities and services with those of the Architect and its consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in the services or information provided by the Architect or by the Owner or the Owner's consultants.

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

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

§ 3.2.2 The Architect shall discuss with the Owner Based on a thorough review of the initial information provided to and obtained by the Architect and analysis of the functional and organizational relationships, requirements and objectives for the Project, the Architect shall prepare a preliminary evaluation of, and shall discuss with the Owner, the Owner's program, schedule, budget for the Cost of the Work, Project site, AZA standards and requirements for accreditation, all applicable federal, state and local zoning and building laws, statutes, ordinances, codes, rules, regulations, orders, and other legal requirements relating to the design, construction, use and occupancy of the Project, utility requirements, Project site considerations, and alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches-approaches and sustainability concepts. The Architect shall reach an understanding with the Owner regarding the Project requirements.

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§ 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES –Article 3.3 Does not apply to this Agreement; Architect only to provide Master Planning Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

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

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

§ 3.3.4 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.

§ 3.3.5 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in awarding and preparing contracts for construction.

§ 3.4 CONSTRUCTION PHASE SERVICES – Article 3.4 Does not apply to this Agreement; Architect only to provide Master Planning Services

§ 3.4.1 GENERAL

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A107™ 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. If the Owner and Contractor modify AIA Document A107 2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

~~§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.~~

~~§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~

~~§ 3.4.2 EVALUATIONS OF THE WORK~~

~~§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.1, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.~~

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

~~§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.~~

~~§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.~~

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

~~§ 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR~~

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

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

~~§ 3.4.4 SUBMITTALS~~

~~§ 3.4.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and~~

installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

~~§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.~~

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

~~§ 3.4.5 CHANGES IN THE WORK~~

~~The Architect may 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 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.~~

~~§ 3.4.6 PROJECT COMPLETION~~

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

§ 4.1 Additional Services are not included in Basic Services but may be required for the Project. Such Additional Services may include programming, budget analysis, financial feasibility studies, site analysis and selection, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, must be approved in advance by Owner in writing and may include civil engineering, telecommunications/data, coordination of separate contractors or independent consultants, coordination of construction or project managers, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.1, ~~value analysis~~, quantity surveys, interior architectural design, planning of tenant or rental spaces, inventories of materials or equipment, preparation of record drawings, commissioning, environmentally responsible design beyond Basic Services, LEED® Certification, fast-track design services, and any other services not otherwise included in this Agreement.

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NA

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§ 4.2.1 The Architect has included in Basic Services four (4) site visits over the duration of the Project during ~~construction, the master planning services.~~ The Architect shall conduct site visits in excess of that amount as an Additional Service ~~Service at the Owner's request.~~

§ 4.2.2 The Architect shall review and evaluate Contractor's proposals, and if necessary, prepare Drawings, Specifications and other documentation and data, and provide any other services made necessary by Change Orders and Construction Change Directives prepared by the Architect as an Additional Service Intentionally omitted.

~~§ 4.2.3 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 any known~~ limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to ~~evaluate, give notice of or enforce lien rights. 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.
Intentionally omitted.

PAGE 6

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

~~§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.~~

~~§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.~~

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

~~§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.~~

ARTICLE 6 COST OF THE WORK -- Article 6 only applies to Master Plan level only

§ 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, and reasonable overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work resulting from Architect's error and omissions 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~~ 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 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. the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget. . Said adjustments shall only be made upon Owner's review and approval of the same.

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

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

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

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

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

~~§ 6.7~~ If the Owner chooses to proceed under Section 6.6.4, the Architect, 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.

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

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

~~§ 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 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.~~

§7.2 Submission or distribution of documents 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 Owner's or Architect's reserved rights.

PAGE 7

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

law.

§ 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 A107™ 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. 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 9.6. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of the 18th Judicial Circuit, County of DuPage, 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.

§ 8.2 MEDIATION/ DISPUTE RESOLUTION

Unless otherwise agreed to by the Parties in writing at the time of the dispute, 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.)

☒ Litigation in a court of competent jurisdiction

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

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the 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 the Agreement.

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

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

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

~~§ 8.3.4 CONSOLIDATION OR JOINDER~~

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

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

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

~~§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven 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 This Agreement may be terminated by either party 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.

§ 9.2 If the Owner suspends the Project, The Owner may suspend the Architect's Services or the Project at the Owner's convenience and without cause at any time upon written notice to the Architect. If the Project or the Architect's Services are suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted for the performance of the Architect's services shall be equitably adjusted, if and as appropriate given the stage of the Project at the time of suspension and resumption, and reason for the suspension. No adjustment shall be made if the suspension is

attributable to the Architect's failure to perform the Services in accordance with this Agreement, for breach by the Architect of any provision of the Agreement, or for any other reason which is the fault of the Architect.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice. Except as otherwise provided in Articles 11 or 12 of 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 days' written notice to the Owner before suspending services. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. 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. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause. In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed in accordance with this Agreement prior to termination, pursuant to Article 11, less the aggregate of previous payments made to the Architect together with Reimbursable Expenses then due.

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

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

§ 9.6 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 as provided by law deduct from any remaining amounts due Architect all damages allowed by law.

§ 9.7 Promptly upon the termination of this Agreement or the Architect's Services and payment in full of all outstanding invoices received from the Architect and not in dispute, the Architect shall deliver to the Owner copies of all documents prepared by Architect in the performance of its Services under this Agreement, including without limitation all drawings and specifications, and all models prepared by the Architect for the Project prior to the effect date of termination, so as to avoid any delay or increased cost of the Project.

§ 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. 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.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner reserves the sole right to release all Project information, as well as to time its release, form and content. This requirement shall survive the expiration of the Contract Documents. Notwithstanding the foregoing, the Owner shall not withhold permission unreasonably for the Architect to release general promotional information concerning the Project, provided that such information shall be reviewed and approved in advance in writing by the Owner. The foregoing shall not be deemed to preclude the Architect from (i) including the Owner's name in a list of former clients in specific proposals to prospective clients or (ii) listing the Owner's name or a Project in the Architect's internal publications.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. This Agreement represents the entire and integrated agreement between the Owner and 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. This Agreement shall be governed by the law of Illinois.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement. 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.

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

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\$67,000.00 total; See Exhibit A of Architect's Proposal for the breakdown of fees by task.

See Section 11.8.2 for Reimbursable Expenses.

...

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal or otherwise by a separate lump sum mutually agreed to by Owner and Architect. Architect shall not provide any Additional Services without prior written approval of Owner.

...

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal

§ 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:~~ twenty percent (20 %).

Additionally:

Architect shall submit copies of all invoices from Architect's consultants to Owner prior to Owner's payment of said services. Architect shall not provide any Additional Services without prior written approval of 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: NA

Design-Development Phase	percent (— %)
Construction Documents Phase	percent (— %)
Construction Phase	percent (— %)

Total Basic Compensation	one hundred percent (— %)
-------------------------------------	--------------------------------------

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

...

In accordance with the hourly rates set forth in Exhibit C of Architect's Proposal

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- .3 Fees paid for securing approval of authorities having jurisdiction over the ~~Project;~~ Project provided that Architect shall first notify Owner of the nature and the amount of such fees and the deadline for payment of the same in sufficient advance of such deadline and must afford Owner the opportunity to obtain a complete or partial waiver of same or to pay same directly;

...

- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- ~~.8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;~~
- ~~.9 All taxes levied on professional services and non-reimbursable expenses;~~
- ~~.10 Site office expenses; and~~
- ~~.11~~ .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the actual and necessary expenses incurred by the Architect and the Architect's consultants ~~plus percent (— %) of the expenses incurred consultants.~~ Reimbursable Expenses shall not exceed Eight Thousand Dollars (\$8,000.00) 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:

Intentionally omitted.

...

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

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

~~—% —1.5% monthly~~

~~**§ 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 off set sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

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

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

Special terms and conditions that modify this Agreement are as follows: **§12.1** In the event Architect breaches its obligations under this Agreement and Owner does not elect to terminate this Agreement due to said breach in accordance with Article 9, 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.

§12.2 Architect shall procure, at no expense to Owner, the insurance coverages described in Exhibit C, it being understood that the cost of such coverage is already included in the Architect's compensation for Basic and Additional Services.

§12.3 Architect accepts full responsibility for the maintenance and payment of all premiums on workmen's compensation insurance and for all other sums becoming due for unemployment insurance, health insurance, old age pensions and annuities now or hereinafter required by any state or federal government, with respect to any persons employed by the Architect for performance of services pursuant to this Agreement. Architect shall also maintain at its own cost and expense policies of insurance against all liability arising out of the negligent errors or omissions of Architect, its agents and employees with respect to the Project. Architect shall cause its consultants likewise to maintain such insurance with respect to services performed by them for the Project.

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

.1 Architect is in default of any of its obligations under this Agreement;

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

However, Owner shall make payments of all undisputed amounts in accordance with the terms of this Agreement.

§12.5 Certifications

- .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 or the Wheaton Park District has any direct or indirect financial interest in the Architect's Proposal or in the Architect.
- .3 The Architect certifies that it is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested.
- .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 The Architect represents that to the best of his knowledge no person employed or engaged by it who has been or will be assigned to work at the Project site has been convicted of any criminal or drug offenses listed in Section 8-23(c) of the Park District Code [(70 ILCS 1205/8-2(c)).
- .6 Architect hereby understands and agrees: a) that because the Cosley Zoo is operated by the Wheaton Park District, an Illinois unit of local government, all documents associated with this Project are subject to disclosure pursuant to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*) (FOIA); b) Architect shall comply with the requirements and provisions of the FOIA and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Architect shall within three (3) business days of said request, turn over to the FOIA Officer any record in the possession of the Architect that is deemed a public record under FOIA.

§12.6 Architect shall indemnify and hold harmless Owner as follows:

To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Owner, the Wheaton Park District, and their officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), arising out of or resulting from Architect's or Architect's consultant's performance of the 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, any subconsultant, 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, the Wheaton Park District and their 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.

§12.7 The Wheaton Park District, as owner of the Cosley Zoo, is the intended third party beneficiary of this Agreement.

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Owner's RFP, dated September 2014, attached to and incorporated as part of this Agreement as Exhibit A.

Architect's Proposal, attached to and incorporated as part of this Agreement as Exhibit B.

Insurance Requirements, attached to and incorporated as part of this Agreement as Exhibit C.

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COSLEY FOUNDATION, INC.

OWNER



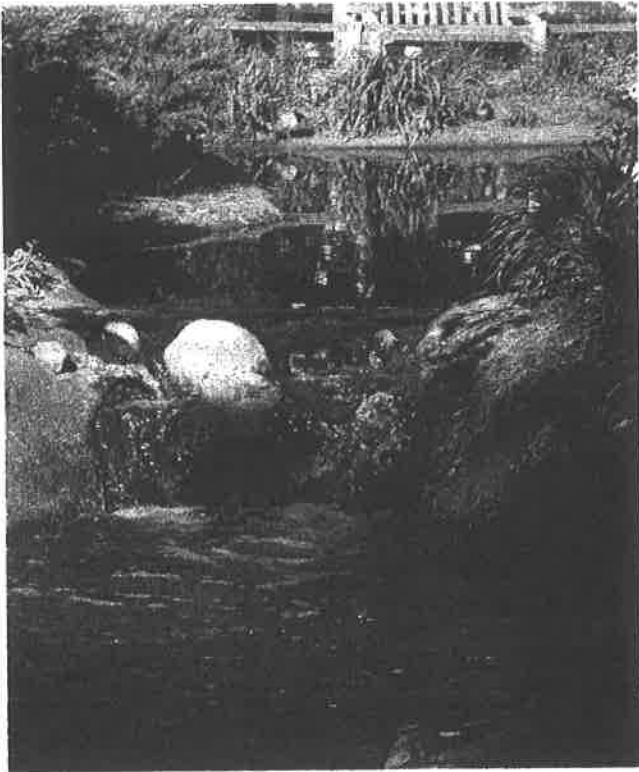
Secretary



TORRE DESIGN CONSORTIUM, LTD. A
PROFESSIONAL CORPORATION

ARCHITECT

EXHIBIT A



Request for Proposal

To Provide
Consultant Services for a
Comprehensive Master
Plan for Cosley Zoo

September 2014

COSLEY ZOO



ACCREDITED BY THE
**ASSOCIATION
OF ZOOS &
AQUARIUMS**

NOTICE OF REQUEST FOR PROPOSAL

CONSULTANT SERVICES FOR A COMPREHENSIVE MASTER PLAN FOR COSLEY ZOO

Introduction and General Information

Cosley Zoo and the Cosley Foundation, Inc. requests proposals from qualified consulting firms for the preparation of a comprehensive master plan for Cosley Zoo to be implemented by November 2014.

Cosley Zoo is owned and operated by the Wheaton Park District and is an accredited member of the Association of Zoos and Aquariums. First opened to the public in 1974, Cosley Zoo sits on 7.19 acres, 5.13 of which are currently developed. Of the 5.13 developed acres, more than 1.09 acres is for public parking. The remaining 2.78 acres is located across a two-lane road from the zoo and could be used for future development. While not currently accessible by the public, the 2.78 acres does provide staff parking and a storage building. Cosley Zoo is open 362 days each year with summer hours of 9am-5pm daily and winter hours of 9am-4pm daily except in December when zoo hours are extended to 9am-9pm each day.

The animal collection focuses on native Illinois wildlife and domestic farm animals. The zoo enjoys visitation of 140,000 each year, more than 50,000 of which participate in some type of educational program. The majority of the zoo's visitors, 78.2% reside within DuPage County, Illinois. Cosley Zoo employs 6 full-time employees, 21 year-round employees and 10 seasonal staff. The zoo receives its operational funds totaling \$1.2 million, primarily through the Wheaton Park District with additional revenue generated through admissions, programs, donations, concessions and gift shop. The zoo has a support organization, The Cosley Foundation, Inc. which sponsors several fundraisers, contributing a small portion to zoo operations while the majority is allocated for capital projects.

Because of successful fundraising, in the last 10 years, Cosley Zoo has undertaken several successful capital projects including the addition of a bobcat exhibit, exhibits for poultry, pigs and rabbits, a veterinary clinic, a rearing area for the Blanding's Turtle (a state endangered species), a butterfly garden, additional parking complete with permeable pavers, the acquisition of an office building adjacent to the zoo's parking lot, the acquisition of .9 acres across the street from the zoo and a renovation of outside exhibits for local songbirds.

The zoo's mission is:

To promote understanding of the relationship among humans, animals and the environment through recreation, education and wildlife conservation.

To accomplish our mission we provide:

- Detailed and comprehensive animal care through trained staff, environmental enrichment, operant conditioning and natural exhibits.

- Meaningful education about animals that affect our lives and how we affect theirs. This is accomplished through a wide variety of programming aimed at various age levels.
- A well maintained and updated facility to offer our visitors complete, safe and efficient service.
- Conservation messages through the display of Illinois endangered species, educational programs and joint projects with other facilities and organizations.
- A diverse and competent staff that is continually educated and updated on all aspects of their job and issues pertaining to the facility.

Purpose

The objective of this plan is to create a shared vision and operational roadmap for developing Cosley Zoo, which also shapes opportunities to increase visitation, revenue and private investment. The plan should be designed to help the zoo achieve its goals which include but are not limited to: providing guests with a meaningful experience that connects people to animals and creates an understanding and appreciation for animals and their conservation; expand revenue operations that support the zoo; improve circulation and parking; implement a cohesive interpretive message; maximize use of limited physical site; implement projects that will increase visitation while supporting long-term business and operational sustainability. The plan should address guest experience enhancement, revenue opportunities, and funding strategies.

Scope

Required services include site investigation and analysis, parking analysis, visitor services and circulation, land use and environmental analysis, exhibit planning, site and facilities master planning, cost estimation and implementation strategies and prioritization and phasing of Master Plan projects. The consultant will gather and analyze pertinent data, meet and brainstorm with zoo staff and other key stakeholders, and conduct a final presentation.

The Master Plan, including a Strategic Business Plan, should be a comprehensive plan addressing all 7.91 zoo acres and guide zoo development for the next ten years. It should consider but not be limited to the following criteria:

Exhibits/Animal Care

- New animal exhibits, incorporating interactive activities and revenue when possible
- Maintenance/renovation of current exhibits
- Phasing/timing of exhibits
- Quarantine facility
- Structure for expansion of conservation programs

Employee Amenities

- Offices
- Break/locker room
- Showering/laundry facilities

Visitor Amenities

- Parking
- Restrooms
- Pathways/visitor flow
- Shade
- Rest areas
- Separating pedestrian traffic from vehicular traffic
- Lighting
- Safety considerations

Revenue/Financial Strategies

- Current and future gift shop
- Current and future food and beverage
- Facility rentals/catering
- New revenue opportunities including but not limited to animal feeding, animal shows, rides, pavilion

Interpretive Programs

- New structure providing first floor accessible classroom and hands-on activities for visitors
- Additional space for an expanded education animal collection
- Development of interpretive goals
- Graphics with consideration to a variety of learning styles
- Interactive opportunities
- Provides

Infrastructure

- Utilities
- Communications
- Controlled access

General

- Compliance with ADA standards

- Sustainable/LEEDS where possible
- Compliance with AZA and USDA standards

Deliverables

Consultant must prepare a range of conceptual plan alternatives, which represent at least two distinctly different approaches for zoo design. Stakeholders will select one of the approaches. Once an approach has been selected, the Final Master Plan can be developed.

The consultant will provide a preliminary report for the goals and opportunities at Cosley Zoo as well as outline the financial viability of developing and sustaining new exhibits, concessions and programs at the zoo.

The Final Master Plan will contain a cohesive physical design of the zoo encompassing all existing and proposed elements such as buildings, roads, vegetation areas, major landscape elements, graphic elements, utilities improvements, etc. It will include animal and non-animal areas as well as revenue centers. The Final Master Plan will also include:

- An executive summary with text and graphics that outline the project, process, theme, goals, objectives, future collection recommendations, design elements, and implementation strategy.
- Illustrative graphics to convey the design concept and assist in promoting the plan to the community. The graphics will include a color comprehensive site plan of the zoo and color eye-level drawings from at least three different locations.
- Provide a final tabulation of development cost.
- Provide a prioritized implementation strategy and schedule of the major additions and renovations.
- Provide a Final Master Plan report documenting the design and public participation process; design drawings including site plans, elevations, photos and other related graphics to clearly define the intent of the plan; and recommendations for implementation. The final project should be a plan view set of drawings that visually identify each of the proposed buildings, selected exhibits, public areas, etc. The report shall be provided in both hard copy and electronic deliverable form. Provide a total of 15 hard copies of the report.
- Present the Final Master Plan to the Master Plan Committee and the Cosley Foundation Board of Directors.
- Provide Cosley Zoo with electronic files of all documents and presentations developed as part of the plan.

As a small institution, it is necessary to keep the cost of the Master Plan within our budgetary limitations. To this end, Cosley Zoo will endeavor to provide as much documentation as possible. Documents provided by the zoo will include:

1. Current and past annual reports
2. Attendance trends (paid versus unpaid, residence, adult versus child)

3. Financial audits for both the zoo and its support organization, the Cosley Foundation, Inc.
4. Current Business Plan
 - ✓ SWOT
 - ✓ Demographics
 - ✓ Similar facility comparison
 - ✓ Mission and vision
 - ✓ Overview of operations
 - ✓ Overview of marketing plan
 - ✓ Goals and objectives
 - ✓ Space study
 - ✓ Organizational chart
5. AutoCAD drawings of property
6. Zoo related portion of the Wheaton Park District Strategic Plan

Master Plan Schedule

The following project schedule is anticipated:

October 13, 2014	RFP closes
October 22, 2014	Staff recommendation and board approval of consultant
November 2014	Identify and select stakeholders
March 2015	First draft review of Master Plan
May 2015	Finalize Master Plan and conduct board presentation

Consultant Qualifications

For a consultant to be considered they must provide the following:

1. Complete background information on the firm, including, but not limited to an overview of the company, number and type of employees, principals and partners, areas of specialization, location and other information that would indicate the necessary qualifications to accomplish this project.
2. A minimum of two separate references from past zoo projects with contact information.
3. A schedule showing the various tasks and total time frame proposed to complete the project.
4. Description of involvement in projects specific to zoo design, experience in expanding and renovating existing design and public involvement during these projects.
5. A statement of your firm's capabilities for visual presentation.
6. Identification of any special equipment, software or procedures available to the firm that will facilitate completion of the activities described herein.
7. Professional liability insurance will be required upon selection.

Proposal Evaluation and Selection

All proposals will be evaluated by a selection team consisting of zoo and park district staff with approval from the Cosley Foundation, Inc. Board of Directors. The selection team reserves the right to reject any or all proposals or cancel the selection process at any time. The selection team also reserves the right to request additional information or clarification from respondents, or to allow for the correction of errors or omissions.

The selection team will select the top firms that it determines to be the most qualified to provide the services requested. The selection team shall have the final authority and discretion to make a selection based upon the qualifications, responsibility and capabilities of respondents, the fairness of price and other factors. Cosley Zoo, the Cosley Foundation, Inc. nor the Wheaton Park District will be liable in any way for the cost incurred by respondents in replying to this RFP or the costs incurred in making a pre-selection presentation to the selection team.

Proposal Submittals

Submittal Due Date: October 13, 2014

Submittal Location: Cosley Zoo
1356 N. Gary Avenue
Wheaton, IL 60187
Attn: Susan L. Wahlgren, Zoo Director

Questions or information related to this request should be directed to:

Susan L. Wahlgren
Cosley Zoo Director
Direct: 630.510.5035
Zoo: 630.665.5534
Fax: 630.260.6408
swahlgren@wheatonparks.org

EXHIBIT A

**TORRE DESIGN
CONSORTIUM, LTD**
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EXHIBIT

B

TASK	2015																												Fees		
	January				February				March				April				May				June										
	19	26	2	9	16	23	2	9	16	23	30	6	13	20	27	4	11	18	25	1	8										
1. Study Initiation & Preliminary Definition of Development Concept																															
2. First Workshop																															
3. Site Analysis																															
3a. Preliminary Information of Market Characteristics																															
4. Preliminary Concept Development																															
5. Second Workshop																															
5a. Survey Competitive Attractions																															
5b. Survey Comparable Attractions																															
6. Preliminary Master Plan																															
6a. Evaluate Market Support																															
7. Preliminary Cost Estimate																															
8. Third Workshop																															
8a. Financial Performance																															
9. Draft Master Plan + 3 Sketches																															
10. Final Report																															
11. Final Presentation																															
Project Complete Submit																															
Total																															
Participate in Workshops with Planning Team																															
Client Review																															
Deliverables (Preliminary Drawings)																															
Draft Plan																															
Final Plan																															
Expenses																															
Prepare monthly Progress report & Statements for Services																															
Total																															
Blue bars represent Economic Feasibility Tasks																															
4 Trps - IDCL @ \$1,500 = \$6,000																															
1 Trp - Schultz & Williams @ \$1,500 = \$1,500																															
Expenses \$500																															
Total \$8,000																															

SCOPE OF WORK

EXHIBIT B



TORRE DESIGN
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Workshop 1 (2 days)

January 27-28, 2015

TDCL Team shall: tour zoo and conduct site reconnaissance; photo document existing conditions; understand from zoo staff the thoughts and opportunities that exist; develop preliminary budget for facility and exhibit projects, present comparable projects and costs for reference. Following the Workshop 1, the TDCL Team will further analyze the projects and develop preliminary drawings (bubble diagrams) at 30"x40" with costs and phasing schedules for presentation at Workshop 2.

Workshop 2 (2 days)

February 24-25, 2015

Present the preliminary project designs to the Zoo, modify accordingly and test against additional opportunities or requirements. The concept of Workshop is to make final decisions on exhibit concepts, costs, and implementation scheduling.

Following Workshop 2, the TDCL Team will more fully develop the selected scheme. TDCL will send to Cosley Zoo the further detailed cost estimates and plans with at least one completed concept and rendering of a project that was given priority at Workshop 2.

Workshop 3 (2 days)

Dates to be determined

The TDCL Team will present refinements of projects with updated designs, costs, and scheduling improvements. These pre-final drawings will be on 30" x 40" hard copies in color. The Workshop effort will be go bring closure to any and all outstanding issues to be resolved or modified. Following the Workshop 3, the TDCL Team will complete final revisions to the pre-final documents, incorporating all review comments and modifications and delivering the final high quality, presentation package for all projects, including a 30"x40" color plan and three preliminary renderings of the project.

After review of Workshop revisions and modifications, TDCL Team will incorporate those final modifications into the final presentation package. Final 30"x40" drawings, three refined renderings, cost estimates, and phasing and implementation schedule will be incorporated into a Power Point presentation.

Project Completion and Presentation (2 days)

Dates to be determined

The TDCL Team will present final versions of the projects and present to whatever City agencies, commissions, Zoo, County officials, or potential donors. There will also be a PowerPoint show that will be given to the Zoo, as well as CDs for further reproduction of renderings and plans by the Cosley Zoo or other entities.



Our team approach is to emphasize carefully sizing the master plan for the Cosley Zoo to the attendance and economic potential which can be supported by the resources and population base of the available markets. To this end, we propose that initial planning for Cosley Zoo focus on the scale of attendance which can be expected from this market-based base, based on a thorough evaluation of local and regional market potentials. Based on this realistic attendance assessment, parallel evaluations of the experience of other zoos in similar market circumstances are then made, directing the scale and complexity of the new exhibitry and expanded animal collection.

The sum of this initial research work is to provide a realistic forecast of attendance potential for the improved zoo, leading to recommendations for the physical sizing factors and overall operating program for the zoo. The expected attendance level points to specific physical planning factors including design-day crowd levels, parking requirements, and visitor support facilities. A sound, comparable facility-based forecast of achievable operating revenues, realistic pricing structure, and operating expense budgets will be included in this effort.



The project will include review of previous Zoo master plans and previous strategic business plans, development of an innovative direction, facilities layout, unique elements and guest experience to create fun, repeatable, and interactive experiences at Cosley Zoo to include but not be limited to:

- Site survey and analysis of potential land development, existing facilities, utilities, visitor amenities, surrounding infrastructure, including transportation issues, neighborhood development, etc. Also, an analysis of potential restrictions to development on the sites due to state, local regulations, permits, historic designation, etc. should be address. This work is intended to form the basis of conceptual architectural/engineering design/cost estimating.
- Parking analysis
- Transportation analysis
- Visitor services and circulation
- Land use and environmental analysis
- Exhibit planning
- Site and facilities master planning
- Cost estimation and implementation strategies
- Prioritization and phasing of Master Plan projects
- Analysis of architectural, structural, mechanical, electrical, life safety, and security systems
- Trends analysis
- Limited analysis of specified programs
- Thematic master plan development, based upon survey of current industry trends, recommendations and conclusions. Thematic master plan will include, but not limited to, programming, exhibits, campus layout, architectural renderings, graphic style, storyboarding, utility planning, parking, and access issues
- Implementation plan which recommends sequencing of construction, estimated costs and durations, and in cooperation with other consulting team members, development of funding plan.
- Presentation materials: We expect to produce a number of presentation materials in order to communicate the design to Cosley Zoo and Zoological Society, the City of Wheaton, County Government, staff, and prospective donors.

For this conceptual phase, the TDCL team would build on the existing programs to creative distinctive, yet inherently appropriate, zoological facilities. Issues of proper visitor facilities, unique architectural themes, exciting exhibits, and proper animal management facilities will be specifically addressed. In addition to selection of a proper site, animal display and management consideration, issues such as service, access, circulation, and land use will be critical to the Cosley Zoo's future success. ~~Pro Forma's (economic consultant)~~ **SUPPLY & WILLIAMS** extensive background in zoo and related recreational facilities will bring reality to economic issues, which will be balanced against the unique opportunities of the region. **4**

Following evaluation of goals, survey of potential sites, programming and other initial economic feasibility planning tasks, we have found that intense, dedicated design/planning sessions (charrette workshops) accomplish the best results for the development of creative design/planning concepts. We propose this process for this project. First, an in-depth understanding of existing conditions and potentials would be accomplished at the proposed site, with Zoo personnel and other team members as necessary. Review and evaluation of the program requirements, goals, and objectives would follow. Once the scope of what facilities were feasible, logical, and affordable was determined, planning and design concepts would be developed. The financial experience of existing zoos comparable to the Cosley Zoo would be studied. These economics would be focused to the unique opportunities of this particular zoo site and the surrounding region. These would be presented and critiqued. Once agreed upon, they would be refined and presented in an effective graphic form.

By using the charrette workshop approach followed by review critiques, an effective, efficient and creative solution can be obtained. This process does require decisive responses on the part of the Owner and other team players. However, since all support members are involved in the design process by the use of workshops, this should not be a problem.

TASK BREAKDOWN

The work will be carried out in accordance with the following tasks.

Task 1: Study Initiation

After execution of contract and project organization, the consulting team will meet with the client to review the goals and objectives for the study, the work program and schedule, and to discuss any local considerations affecting the study. Local sources of information will also be reviewed. The team will familiarize itself with previous studies done for the Cosley Zoo, as applicable.

The team will conduct a reconnaissance of the land potentially available for development. The Owner is to provide planimetric survey bases formatted for AutoCAD 2014, geotechnical data, basemaps, etc., as required for base zoo and its potential expansion.



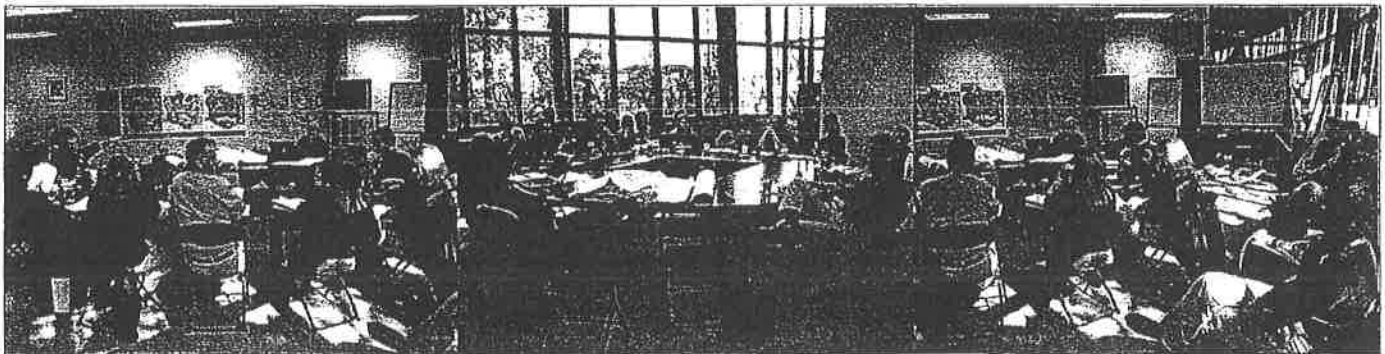
Based on discussion with the client, a preliminary development concept for the proposed facility will be articulated. The consultants will review with the client group their initial thoughts on the general nature of the proposed facility. Based on this information, supplemented by the consultants' professional experience, a summary description will be prepared of the preliminary development concept for the proposed facility. This description will summarize the basic themes and components of the proposed project and the basic manner by which they will be presented to visitors. At this initial stage of the work, the concept description will be carried only to the point necessary for evaluation of the candidate sites in diagrammatic form, but will include:

- Available land/utilization of Central Zoo acreage and their potentials
- Overall traffic and circulation
- Parking and entrance areas
- Campus layout
- Visitor circulation pathway/traffic patterns, options for trams/rides, etc.
- New animal exhibits/ related facilities and holding facilities
- Visitor services facilities (food, retail, service)
- Visitor services (entertainment/amenities/thematic development)
- Education/interpretive facilities
- Service systems/areas
- Administrative and operational facilities
- Site characteristics
- Existing site vegetation analysis
- Existing infrastructure/utilities

Task 2: First Workshop

After the initial reconnaissance described above, but on the same trip, a workshop will be held with the client group and its invitees. The purpose will be to review the present and strategic plan objectives for development of the Cosley Zoo and the principles which should govern the design and operation of the Zoo.

The design team shall facilitate, through discussions and diagrams and other available tools, concepts to discuss and explore the vision of Cosley Zoo, the direction developed by previous strategic business plans, and pursue the potential thematic development of the zoo and initial conceptual programming of potential exhibits, concepts on market and brand identity strategies, as well as initial pragmatic response to the current physical potentials and challenges of the Cosley Zoo facilities. The goal is to set a preliminary series of concepts that use the foundational attributes of the latest Cosley Zoo Strategic Business Plan and the latest thinking in zoologic design and development.



Task 3: Analysis

The team will evaluate the attributes of the site with regard to their bearing on future development of the Zoo. Factors to be included will include, but not necessarily be limited to: topography, vegetation, potentially available acreage, access, visibility, presence and/or absence of utilities, and relationship to other features of the surrounding area. Opportunities for and constraints upon future zoo development presented by the site will be identified.



Task 3a: Preliminary Information on Market Characteristics (SCHULTZ & WILLIAMS)

Information on market size and characteristics will be developed for 1) the local market, 2) the regional market, and 3) the tourist market passing through the area. Data to be developed for the local and regional markets will include the following:

- Number of Residents
- Number of Households
- Household Income Distributions
- Number of Children

Data on the tourist market will depend on the extent to which information is available on tourism volumes and characteristics of the region.

This information and analyses will be important in establishing the peak design day, which affects visitor pulsing, length and duration of exhibit experiences, visitor services layouts and thematic development of "portals" or entry complexes to potential new exhibits and their storylines and interpretive experiences.

Task 4: Preliminary Definition of Development Concept

Based on what is learned in the preceding tasks, the TDCL team will prepare a preliminary development concept for the development of the Cosley Zoo. The consultants will review with the client group their initial thoughts on the general nature of the proposed facilities. A description will be prepared summarizing the basic themes and components of the proposed project and the basic manner by which they will be presented to visitors. TDCL will prepare a "bubble diagram" identifying the proposed major features of the proposed zoo improvements and their general relationships, thematic concepts, interpretive program, and potentials on brand identity.

Task 5: Second Workshop

The consulting team will hold a workshop with the client group to discuss the preliminary development concept prepared during Task 4. The result will be discussion and modification of the general direction for conceptual development.

Task 5a: Survey of Complementary and Competitive Attractions (PRO FORMA)

Pro Forma will survey visitor attractions in the region which would be complimentary to or competitive with the proposed attractions. For these complementary facilities, the analysis will include:

- Attraction Content
- Admission Pricing
- Annual Levels of Visitors
- Distribution of Resident versus Tourist Market Visitors and Visitor Origins within the Resident Market, to the Extent Known.

Existing and planned competitive facilities outside the Wheaton area but within day-trip distance will also be identified.

Task 5b: Survey of Comparable Attractions (PRO FORMA)

Selected relevant zoos in North America will be surveyed to determine key facility, visitor and operating characteristics. Elements to be included in the survey are as follows:

- Attraction/ Exhibit Content
- Admission Pricing
- Number of Visitors and Visitor Characteristics
- Average Visitor Length of Stay
- Developed Acreage Occupied by the Zoo and General Intensity of Development
- Market Size

This effort will help position Cosley Zoo in its desire to create a facility of the highest regional perceived value to serve the rapidly growing metropolitan Wheaton/Chicago population and to maintain its position as a premier regional destination.



Task 6: Preparation of Preliminary Master Plan

TDCL would complete the development of a preliminary concept master plan and thematic design, which would include suitable detail for proper cost estimates. Included would be:

- Utilization of Central Zoo acreage potentials
- Off-site and on-site infrastructure requirements/improvements
- Major development goals
- Utility system expansion
- Pedestrian circulation pathway/tram opportunities
- Primary exhibit facilities
- Primary visitor service facilities
- Secondary visitor service facilities
- Education/interpretation facilities
- Entertainment amenities, rides, and other attractions
- Administration and service facilities
- Potential phasing scenario
- Potential funding scenario

Task 6a: Evaluation of Market Support (PRO FORMA)

Utilizing information developed in the foregoing analyses, Pro Forma will prepare a projection of the annual attendance at the proposed Zoo upon build-out, and will identify the supportable level of admission pricing. The attendance estimate will include high and low estimates

Task 7: Preliminary Construction Cost Estimate

TDCL will prepare a general-order-of-magnitude estimate of development costs, based on a review of the experience of other projects and the general nature of the site.

Task 8: Third Workshop

This workshop will be devoted to the presentation and discussion of the preliminary master plan, along with the preliminary construction cost estimate. Attendance estimates should accompany this presentation, accomplished by Cosley Zoo's economic/market feasibility consultant or in-house staff projections. Pro Forma will attend this Workshop.

Task 8a: Financial Performance (PRO FORMA)

Pro Forma will evaluate the potential financial performance of the proposed facility, including:

- a general estimate of the level of capital expenditures necessary to develop the proposed facility, based on the findings from Task 7;
- estimated annual revenues to be generated by the facility including per capita admission revenues, per capita visitor spending for the gift shop purchases, food and beverages sales, and other sources of annual income and support;
- the annual cost necessary to operate and market the facility;
- preparation of a financial estimate projecting annual income and operating costs of the proposed Cosley Zoo improvements. An estimate will be prepared for the year following completion of the Master Plan first phase improvements and the year following completion of all phases of improvements.

Task 9: Preparation of Draft Report

Based on the analysis conducted in the foregoing tasks, TDCL will prepare a draft report setting forth the findings and recommendations from the work, along with the supporting data and analysis. One hard copy and a digital copy of the draft report will be submitted, concurrent with the presentation in the fourth workshop.

TDCL will submit the draft edition of the physical master plan and the three image sketches, and review them with the client group for compliance with the desired imagery and thematic development of the master plan's elements:

- Proper utilization of zoo land and all historic resources with campus development
- Off-site and on-site infrastructure requirements/improvements/access issues
- Major development goals: response to mission-driven interpretive strategy
- Utility system expansion
- Pedestrian circulation pathway/tram opportunities
- Primary exhibit facilities



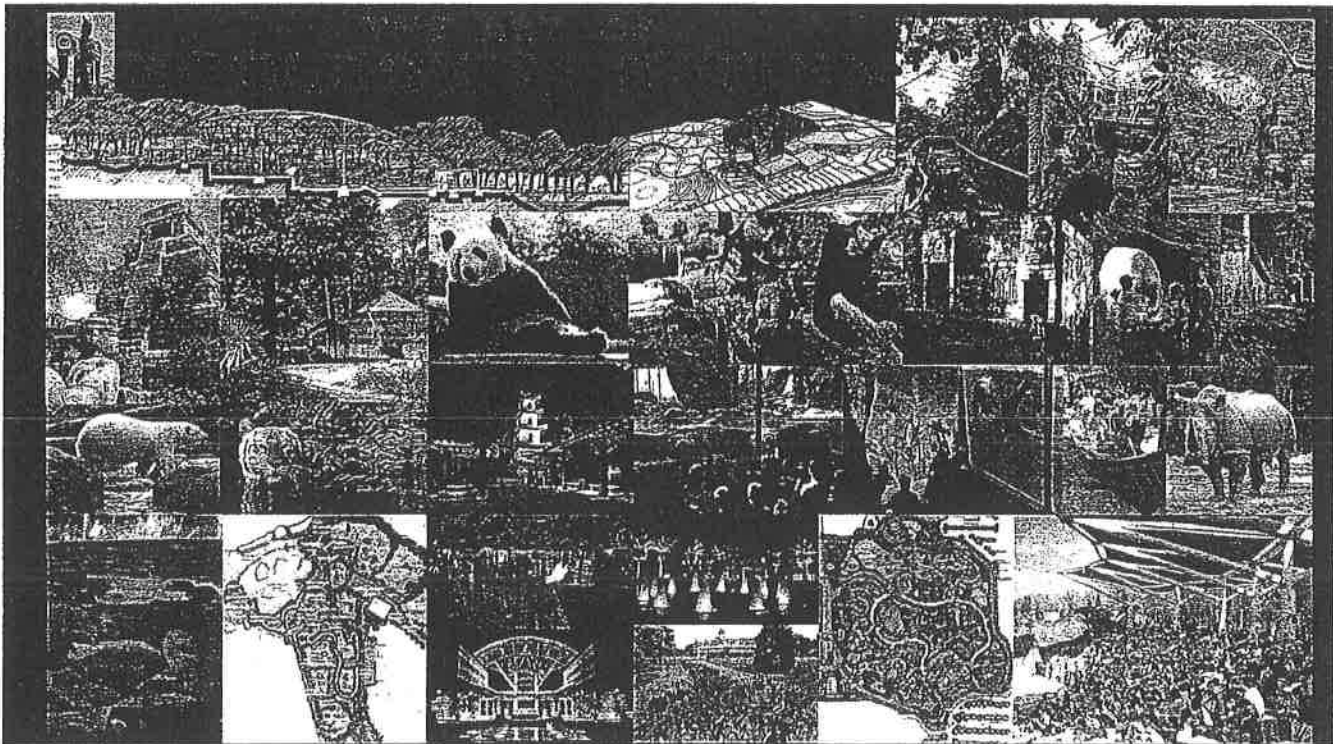
- Primary visitor service facilities, themed with sketches and images
- Secondary visitor service facilities, themed with sketches
- Education/interpretation facilities
- Entertainment amenities, rides, and other attractions
- Administration and service facilities
- Sustainability concepts
- Updated cost estimate
- Refine branding identity concepts
- Potential phasing scenario

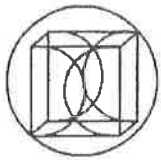
Task 10: Final Report

Following the receipt of written review comments by the client, TDCL will make final revisions to the Master Plan Report and presentation package of 30"x40" drawings and Power Point.

Task 11: Final Presentation/4th Trip

TDCL will make a formal presentation of the Master Plan at a venue to be determined by the client.





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**CONTRACT EXHIBIT C
SLIDING FEE SCHEDULE & HOURLY RATES**

**COSLEY ZOO
MASTER PLAN**

**2014 SLIDING FEE SCHEDULE
FOR BASIC SERVICES for**

ZOOLOGICAL AND RECREATIONAL DESIGN SERVICES

<u>Construction Cost</u>	<u>Fee Percentage</u>
\$ 200,000.00	18.00%
300,000.00	17.50
400,000.00	17.00
500,000.00	16.50
600,000.00	16.00
800,000.00	15.75
1,000,000.00	15.50
1,250,000.00	15.25
1,500,000.00	15.00
1,750,000.00	14.75
2,000,000.00	14.50
2,250,000.00	14.25
2,500,000.00 and over	14.00

Schedule of Fees for Additional Services and Hourly Rates

• Principals	\$200.00 per hour
• Project Managers	\$125.00 per hour
• Senior Staff	\$100.00 per hour
• Graphic Designer	\$ 85.00 per hour
• Staff Landscape Architects and Architects	\$ 85.00 per hour
• Clerical and Technical	\$ 65.00 per hour

Reimbursables

- Travel per diem \$75.00 per day plus air fare and lodging
- Other project expenses at cost:
 - public transportation, charter or rental
 - printing, graphics, photography, and reproduction
 - rental or purchase of special equipment and material
 - long distance telephone or special shipping
 - project licenses and public fees, tests or inspections
 - models, presentations, perspectives, and renderings
 - topographic surveys
 - vehicle mileage at prevailing IRS allowable vehicle reimbursement rate

Special project consultants at cost, plus 20 percent administration of consultant fee.

Exhibit C

ARCHITECT'S INSURANCE REQUIREMENTS

Architect shall obtain and maintain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Architect shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing similar 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, the Wheaton Park District, their elected and appointed officials, employees, volunteers and agents shall be included as an additional insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least similar 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 and the Wheaton Park District.

If Owner and the Wheaton Park District have not been included as an additional insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required under this Agreement, the Architect waives all rights against Owner, the Wheaton Park District, and their officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Architect work.

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

B. Professional Liability Insurance

Architect shall maintain professional liability with a limit of not less than \$1,500,000 insuring each negligent act, error or omission arising out of Architect's performance or failure to perform professional services.

C. Business Auto

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

D. Workers Compensation Insurance

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 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, 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.

E. 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.

Architect shall provide 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.

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.

If Architect fails to furnish and maintain insurance as required, Owner shall have the right to either: 1) purchase such insurance on behalf of Architect, and Architect shall pay the cost thereof to the Owner upon demand therefor and shall furnish to the Owner any information needed to obtain such insurance; or 2) prohibit 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 10 days of Owner's written request for said copies.

2. Acceptability of Insurers

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

3. Cross-Liability

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. Subconsultants

Architect shall cause each subconsultant 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 subconsultant.

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