

# DRAFT AIA® Document B133™ – 2019

## Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

**AGREEMENT** made as of the « » day of « February » in the year « 2020 »  
(In words, indicate day, month and year.)

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

« Village of Oak Park »  
« 123 Madison Street »  
« Oak Park, Illinois 60302 (hereinafter referred to as "Owner" or the "Village") »  
« »

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

« FGM Architects Inc., a Delaware corporation authorized to conduct business in the State of Illinois »  
« 1211 West 22<sup>nd</sup> Street, Suite 700 »  
« Oak Brook, Illinois 60523 (hereinafter referred to as "Architect") »  
« »

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

« Renovation and New Police Station Addition (hereinafter referred to as "Project") »  
« 123 Madison Street »  
« Oak Park, Illinois 60302 »

The Construction Manager (if known):  
(Name, legal status, address, and other information)

« TBD »« »  
« »  
« »  
« »

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; A133-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; and A134-2019™ Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

« The initial program was developed as part of a study prepared by FGM Architects titled "Oak Park Police Department Space Needs Assessment dated August 20, 2019, all as set forth as Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the "Study"). To the extent of a conflict between any term of this Agreement and the Study, this Agreement shall control. »

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

« The Project consists of the renovation of the basement areas occupied by the Police Department at 123 Madison Street, commonly known as Village Hall, as the existing police station, and the construction of a new police station addition on vacant land on the existing site of the Village Hall. Approximately 16,382 sq. ft. of the existing police station will be renovated and a 64,111 sq. ft. addition will be constructed on the vacant land of the existing site of the Village Hall. »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

*(Provide total and, if known, a line item breakdown.)*

« The Owner's initial construction budget is approximately \$37-\$39 million. »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« The Project is anticipated to begin in March of 2020 and the Project will be competitively bid in the Fall of 2020. »

.2 Construction commencement date:

« Winter/Spring 2021 »

.3 Substantial Completion date or dates:

« New Addition – Spring/Summer 2022, Renovated areas – Winter/Spring 2023. »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner intends to retain a Construction Manager pursuant to the following agreement:  
(Indicate agreement type.)

[ ☒ ] AIA Document A133–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[ ☐ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

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

« N/A - Project is expected to be delivered in a single phase »

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« Owner may pursue LEED Certification for the Project, which will be determined during the Schematic Design phase of work. »

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this Agreement, the Owner and Architect shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

« Village Manager »  
« Village of Oak Park »  
« 123 Madison Street »  
« Oak Park, Illinois 60302 »  
« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address, and other contact information.)

« Police Chief LaDon Reynolds and Public Works Director John Wielebnicki, or their successors »

**§ 1.1.10** The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

**.1** Construction Manager:

*(The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)*

« Construction Manager is anticipated to be retained in the Spring of 2020. »

**.2** Land Surveyor:

« TBD » « »

« »

« »

« »

« »

**.3** Geotechnical Engineer:

« TBD » « »

« »

« »

« »

« »

**.4** Other consultants and contractors:

*(List any other consultants and contractors retained by the Owner.)*

« Environmental Consultant - TBD »

« Building Energy Level Metering Reporting for LEED Projects (if required) - TBD »

**§ 1.1.11** The Architect identifies the following representative in accordance with Section 2.4:

(List name, address, and other contact information.)

« Raymond Lee »

« FGM Architects Inc. »

« 1211 West 22<sup>nd</sup> Street, Suite 700 »

« Oak Brook, Illinois 60523 »

« »

« »

**§ 1.1.12** The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

(List name, address, and other contact information.)

**§ 1.1.12.1** Consultants retained under Basic Services:

**.1** Structural Engineer:

« McCluskey Engineering Corporation »

« 1887 High Grove Lane »

« Naperville, Illinois 60540 »

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

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

**.3 Civil Engineer:**

« Terra Engineering Ltd. »  
« 225 West Ohio Street, 4<sup>th</sup> Floor »  
« Chicago, Illinois 60654 »

**.4 Security Consultant:**

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

**.5 Audio Visual Consultant:**

« Advanced Communications Inc. »  
« 201 Woodcreek »  
« Michigan City, Indiana 46360 »

**.6 Commissioning Consultant:**

« Prasino Engineering »  
« 747 E. Boughton Road »  
« Bolingbrook, Illinois 60440 »

**§ 1.1.12.2 Consultants retained under Supplemental Services:**

« Land Surveying (by Terra Engineering), Environmental Consulting (by Midwest Environmental Consulting Services, 2551 N. Bridge Street, Yorkville, Illinois 60560), Energy Modeling (by Prasino Engineering). »

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

« »

**§ 1.2** The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation pursuant to a subsequent written agreement executed by the authorized representatives of both parties. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information pursuant to such subsequent written agreement.

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

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

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects performing similar services for projects of like size and kind, including but not limited to, the skill and care necessary to cause final construction documents prepared by the Architect or any consultant of the Architect to be in compliance at the time of bidding with applicable laws, statutes, codes, ordinances, orders, rules and regulations of any governmental authority or authorities having jurisdiction over the Project. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 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.

§ 2.6 **Insurance.** The Architect shall procure and maintain the following insurance for the durations provided below. All specified insurance shall be obtained from insurance companies licensed to conduct business in Illinois and with a Best's Key Guide Rating of at least A / VIII. All specified policies shall by endorsement incorporate a provision requiring thirty (30) days written notice to the Owner prior to the cancellation, non-renewal or material modification of any such policies. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Architect shall notify the Owner, and Owner shall reimburse the Architect for any additional cost. The Architect shall require any of its consultants to secure and maintain insurance as set forth in this Section 2.6 and indemnify, hold harmless and defend the Village and its officers, officials, contractors, employees and volunteers as set forth in this Agreement. The obligation to defend shall not be applicable to the Architect or any of its consultants but shall be applicable to claims covered under the Architect's commercial general liability and umbrella policies or those of its consultants to the extent such obligation to defend is required by this Agreement. Unless otherwise required by the Owner, the Architect's insurance shall be as follows:

§ 2.6.1 Commercial General Liability insurance, including Completed Operations, with policy limits of not less than «One Million Dollars» (\$ « 1,000,000.00 » ) for each occurrence and «Two Million Dollars» (\$ « 2,000,000.00 » ) in the aggregate for bodily injury and property damage. The policy shall be properly endorsed to list "the Village of Oak Park and its officers, officials, employees, contractors and volunteers" (hereinafter referred to as the "Village Insureds") as additional insureds. Such coverage shall be maintained in full force and effect until completion of Architect's Basic and Additional Services, except the Completed Operations coverage, which shall extend an additional four (4) years after Final Completion.

§ 2.6.2 Automobile Liability insurance covering vehicles owned by the Architect, if any, and non-owned vehicles used by the Architect with policy limits of not less than «One Million Dollars» (\$ « 1,000,000.00 » ) combined single limit and aggregate for bodily injury and property damage along with any other statutorily required automobile coverage. The policy shall be properly endorsed to name the Village Insureds as additional insureds. Such coverage shall be maintained in full force and effect until completion of Architect's Basic and Additional Services.

§ 2.6.2.1 Umbrella policy with a limit of at least Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate. The policy shall be properly endorsed to name the Village Insureds as additional insureds. Such coverage shall be maintained in full force and effect until completion of Architect's Basic and Additional Services.

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.6.1 and 2.6.2.



§ 2.6.4 Workers' Compensation insurance at statutory limits with policy limits of not less than « Five Hundred Thousand Dollars » (\$ «500,000 »). Such coverage shall be maintained in full force and effect until completion of Architect's Basic and Additional Services.

§ 2.6.5 Employers' Liability with policy limits not less than « Five Hundred Thousand Dollars » (\$ « 500,000.00 » ) each accident, « Five Hundred Thousand Dollars » (\$ « \$500,000.00 » ) each employee, and « Five Hundred Thousand Dollars » (\$ « 500,000.00 » ) policy limit.

§ 2.6.6 Professional Liability insurance covering all negligent acts, errors and omissions of the Architect in its performance of professional services, with policy limits of not less than «Five Million Dollars» (\$ «5,000,000.00 » ) in the aggregate. Such coverage shall be carried on a claims-made basis. Such coverage shall be maintained in full force and effect for the term of this Agreement and for a period of four (4) years after completion of all of Architect's Basic and Additional Services.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Village Insureds as additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Additional Insureds insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.6.

§ 2.6.9 The Architect shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village Insureds. The Architect understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Architect, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village Insureds as herein provided. The Architect waives and agrees to require its insurers to waive its rights of subrogation against the Village Insureds.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include but are not limited to usual and customary structural, mechanical, plumbing, civil, fire protection and electrical engineering services. Other services to be provided include civil engineering, landscape architecture, furniture and furnishings design, security, audio visual, and basic/fundamental commissioning consulting. The Basic Services shall include design and specialty services necessary to provide a complete design of the Project. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner and the Construction Manager, research and develop for the Owner's review and acceptance applicable design criteria, attend Project meetings reasonably requested by the Owner, communicate with members of the Project team, and report progress to the Owner on a regular basis.

§ 3.1.1.1 The Architect shall, in consultation with the Owner, ascertain the Owner's needs including those related to aesthetics, function, quality, time, budget, and financing, shall establish the requirements for the Project taking into account such needs of Owner, and shall develop a written program for the Project with the Owner. The Project's initial program and budget are reflected in the Study attached as Exhibit A.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, the Construction Manager, and the Owner's consultants. After the Architect has reviewed such services and information and notifies the Owner in writing of any defects and deficiencies in such services or information of which the Architect is or should be aware, the Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner only if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial

Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and a reasonable time 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 approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction. The Owner shall render decisions in a timely manner so as to not adversely affect the schedule or cause the schedule to be exceeded.

**§ 3.1.4** The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services. Once the Owner, Construction Manager, and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause or by subsequent agreement. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.5** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval. Notwithstanding, if Owner proposes to take such action without the Architect's approval, and Architect knows of such action and believes such action may be detrimental to the aesthetic, architectural, structural and/or functional aspects of the completed Project, the Architect shall so inform the Owner, in writing and with specificity, as soon as is reasonably practicable.

**§ 3.1.6** The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall use professional care to respond to written publicly available applicable design requirements imposed by those authorities having jurisdiction over the design of the Project. The Architect shall not be responsible for additional costs incurred because of a reasonable difference of opinion or interpretation of applicable code requirements with that of such governmental authorities.

**§ 3.1.7** The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall assist the Construction Manager to prepare the paperwork required to apply for the approval of governmental authorities having jurisdiction over the Project if necessary, and shall present such documentation to the Owner for review, approval and execution, if necessary. The Architect shall present the Project at meetings or hearings to facilitate those approvals and the issuance of all permits required to commence and complete construction.

**§ 3.1.8** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

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

**§ 3.1.10** If the Project involves remodeling and/or rehabilitation of an existing structure, certain assumptions regarding existing conditions are required to be made. Since some of these assumptions may not be verifiable within Owner's budget or without destroying otherwise adequate or serviceable portions of the Project, the Owner agrees that, except for specific tasks identified for the Architect to perform under the Agreement, the Owner shall reimburse the Architect as an Additional Service for changes, modifications, additions or alterations to the Construction Documents which may arise or



result from unforeseen or concealed conditions. The Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect and its consultants from and against all claims, damages, losses, costs, damages and expenses arising from unforeseen or concealed conditions.

**§ 3.1.11** The LEED Green Building Rating System and other similar environmental guidelines (collectively referred to as “LEED Guidelines”) utilize certain design and usability recommendations for a project in order to promote an environmentally friendly and energy efficient facility. When LEED Guidelines are required by the Owner to be used for the Project, the Architect shall use professional care to interpret and apply the LEED Guidelines to the Project. The Owner acknowledges and understands that LEED Guidelines are subject to various and possibly contradictory interpretations and that compliance may involve factors beyond the control of the Architect, including such factors as Owner’s use and operation of the completed Project. The Architect does not warrant or represent that the Project will achieve LEED certification or that the estimates of energy savings and costs relating to building or equipment operation will actually be realized by the Owner. The Architect shall not be responsible for any environmental or energy shortfalls or losses arising from the use and operation of the Project.

### **§ 3.2 Review of the Construction Manager’s Guaranteed Maximum Price Proposal or Control Estimate**

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner’s acceptance or approval, a Guaranteed Maximum Price proposal or Control Estimate. The Architect shall assist the Owner in reviewing the Construction Manager’s proposal or estimate. The Architect’s review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager’s proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.2** Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or Control Estimate.

### **§ 3.3 Schematic Design Phase Services**

**§ 3.3.1** The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect’s services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

**§ 3.3.2** The Architect shall assist the Construction Manager in preparing, solely for the use by the Owner, a preliminary evaluation of the Owner’s program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner in writing of (1) any inconsistencies discovered in the information, (2) other information or consulting services that may be reasonably needed for the Project, and (3) any impact that the selected delivery method may have on the scheduled completion of the Project.

**§ 3.3.3** The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner’s sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.3.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare, present and explain to the Owner and Construction Manager, for the Owner’s approval, a preliminary design illustrating the scale and relationship of the Project components.

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

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents. Upon receipt of Owner's approval by the Owner's Board of Trustees of the Schematic Design Documents, the Architect shall commence the Design Development Phase.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

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

#### § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, fire protection and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels. The Architect shall provide one (1) exterior design concept to the Owner for approval as part of the Basic Services. Any additional design concepts shall be charged as an Additional Service in accordance with Section 4.2.

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents. Upon receipt of Owner's approval of the Design Development Documents by the Owner's Board of Trustees, the Architect shall commence the Construction Documents Phase.

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

#### § 3.5 Construction Documents and Bidding Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. Additionally, the Construction Documents shall include all Drawings and Specifications required to obtain the construction permits and approvals of all governmental authority or authorities having jurisdiction over the Project. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the design of the Project into the Construction Documents. Owner shall provide said design requirements to the Architect in writing.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall assist the Owner and Construction Manager in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions), as modified by the Owner and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

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

§ 3.5.5 Upon receipt of the Construction Manager's information and Control Estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents. Upon receipt of Owner's approval of the Construction Documents by the Owner's Board of Trustees, the Construction Manager shall commence the Bidding/Negotiation Phase with the assistance of the Architect and the Owner's representative shall authorize the Project to be bid.

### § 3.5.6 Competitive Bidding

§ 3.5.6.1 Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining competitive bids to the extent required by law; (2) confirming responsiveness of bids and the responsibility of the bidders; (3) determining the successful bid, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.6.2 Bidding Documents shall consist of bidding requirements and proposed Contract Documents, all of which shall be included by the Architect in the Project Manual and Drawings.

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

- .1 providing an electronic copy of the Bidding Documents to the Construction Manager for distribution to prospective bidders;
- .2 participating in a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda for distribution by Construction Manager; and
- .4 assisting the Owner and Construction Manager in the Owner's opening of the bids.

§ 3.5.6.4 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare addenda for distribution by Construction Manager identifying approved substitutions to all prospective bidders.

§ 3.5.6.5 The Architect shall assist the Construction Manager, if required, to analyze, investigate and evaluate each bid.

§ 3.5.6.6 Upon award of each bid, the Owner shall assign each such bid to the Construction Manager, who shall also be designated as the Contractor in the A201 General Conditions.

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

## § 3.6 Construction Phase Services

### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by the Owner and included in the Project Manual. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. The Architect shall coordinate with the Owner and Owner's attorney to ensure that the Owner's modifications to the A201 General Conditions are included in the Project Manual.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect properly issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for jobsite safety, safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents, except if the Architect fails to provide written notice as required in this Agreement and such failure causes specific damages to the Owner beyond those damages caused by the Construction Manager's failure to properly perform the Work. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work. During the Project, the Architect shall promptly report in writing to Owner any known defects or deficiencies in the Project or the Work of the Construction Manager or any of its Subcontractors, or their agents or employees, or any other person performing any of the Work. Drawings or Specifications furnished by the Architect that are found to contain any error or omission shall be promptly corrected by the Architect at no cost to the Owner. These provisions shall not limit the Owner's remedies under this Agreement.

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

## § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner in writing (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work. The Architect shall on an average weekly basis attend and conduct construction meetings with the Construction Manager and subcontractors. The Architect shall on a weekly basis observe the Project site for the duration reasonably necessary to assure the Architect that the Work is being completed in accordance with the Contract Documents. The Architect shall perform such site observations only with competent personnel and consultants who are experienced in such tasks and acceptable to the Owner.

On the basis of such on-site construction observation, the Architect shall keep the Owner informed of the progress and quality of the Work and shall exercise due care and diligence to guard Owner against defects and deficiencies in the Work of the Construction Manager and Subcontractors, and shall promptly report to the Owner any defects or deficiencies in any Work known to the Architect. The Architect shall submit a field report to the Owner for each field visit. During critical phases of construction, the Architect shall or its consultants shall provide on-site observation to verify construction is in accordance with the Contract Documents. In such instances, the Architect or its consultants shall prepare a field report of the conditions observed and any recommendations to be acted upon by Owner. The Architect and its specialty engineers, consultants, agents and officers shall promptly upon notice or discovery during the Construction Phase or thereafter make necessary revisions or corrections of errors, ambiguities or omissions in its Drawings and Specifications without additional costs to the Owner. The Architect shall, at no additional cost to the Owner, provide project representation beyond Basic Services when required due to the Architect's failure to exercise a professional standard of care.



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

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

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

**§ 3.6.2.5** The Architect shall serve as Initial Decision Maker to the extent provided in AIA Document A201–2007, as amended and included in the Project Manual.

### **§ 3.6.3 Certificates for Payment to Construction Manager**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the standard of care provided in this Agreement, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

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

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

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** After the Construction Manager reviews, approves, and transmits the submittals, the Architect shall review and approve, or take other appropriate action upon, the Construction Manager's submittals such as Shop Drawings, Product Data and Samples that are required by the Contract Documents for the purpose of ascertaining if the submittals conform to the Contract Documents. Where appropriate, the Architect's consultants shall review and approve submittals. 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 Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect or its consultants shall specify the appropriate performance and design criteria that such services must satisfy. Subject to the terms of Article 3.6.4.2, the Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect and its consultants shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, unless the Architect knows or reasonably should know that such submittals contain errors or omissions or do not conform to the Contract Documents.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall be made in a form approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If deemed appropriate by the Architect, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents and shall regularly notify the Owner of same at progress meetings.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

The Architect shall review requests by the Owner or Construction Manager for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without extensive investigation. If necessary, the Architect shall prepare additional Drawings and Specifications to accompany the changes in the Work. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may, at the Owner's option, issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work under this Article 3.6.5 and shall regularly notify the Owner of same at the construction progress meetings. The Architect shall, at appropriate intervals, update the Construction Documents to incorporate all approved changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner if satisfactory to the Architect, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work observed by Architect complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner to (1) check overall conformance of the Work observed with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the punch list submitted by the Construction Manager of Work to be completed or corrected.



§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

#### ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

##### § 4.1 Supplemental Services

§ 4.1.1 Some of the Additional Services listed below are designated as included in Basic Services. The Additional Services listed below that are not listed as "Not Provided" are not included in Basic Services or Additional Services, and shall only be provided upon the subsequent written agreement of the parties with respect to the scope, nature, and compensation for such services. All other Additional Services listed below are the responsibility of the Owner unless otherwise indicated.

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Commissioning (enhanced and building envelope)	Architect
§ 4.1.1.2 Sustainable Project Services pursuant to Section 4.1.3	Architect
§ 4.1.1.3 Other services provided by specialty Consultants	Architect
§ 4.1.1.4 Other Supplemental Services (land surveying)	Architect
§ 4.1.1.5 Other Supplemental Services	Owner

##### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

« § 4.1.1.1 Commissioning: Includes Enhanced Commissioning in accordance with LEED V4, Option 1, Path 1, including commissioning process (CxP) activities for mechanical, electrical, plumbing, and renewable energy systems and assemblies in accordance with ASHRAE Guideline 0–2005 and ASHRAE Guideline 1.1–2007 for HVAC&R systems, as they relate to energy, water, indoor environmental quality, and durability; and Building Envelope Commissioning including review of building envelope design and installation as part of Enhance Commissioning, Option 2 of LEED V4 to verify system performance to mitigate moisture and infiltration. »

« § 4.1.1.2 Sustainable Project Services: Includes LEED Consulting for Certified or Silver level certification of new police station addition. Services include architectural and engineering consulting services, energy modeling, USGBC registration and certification review fees. »

« § 4.1.1.3 Environmental Consulting Services: Includes environmental testing for asbestos and lead, and remediation design. »

« § 4.1.1.4 Land Surveying: Includes ALTA Survey of the site and as-built survey services. »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

« § 4.1.1.5 Geotechnical Consulting: Geotechnical exploration and construction material testing »  
« § 4.1.1.5 Building Energy Level Metering Reporting for LEED Projects »  
« § 4.1.1.5 Asbestos removal project management, air quality testing, and lead project management and clearance sampling. »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

## § 4.2 Architect's Additional Services

The Architect may provide Additional Services 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 and an appropriate adjustment in the Architect's schedule.

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;
- .2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the Construction Manager's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner- authorized recipients;
- .7 Preparation of design and documentation for substantial alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8 Preparation for, and attendance at, more than four (4) a public presentations, meetings or hearings other than Owner's board meetings which are included in Architects Basic Services;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and

- .15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.
- .16 Documentation, data collection, preparation for and attendance at meetings and similar services necessitated by the inclusion of a provision for liquidated damages in the Contract Documents;
- .17 Services related to regional storm water studies; or
- .18 Services related to building permitting in excess of forty (40) hours.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service initiated by the Owner;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5 Evaluating an extensive number of substitutions proposed by the Owner or Construction Manager and making subsequent revisions to Instruments of Service resulting therefrom.

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

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

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within « thirty-eight » ( « 38 » ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project as requested by the Architect in writing and reasonably necessary for the Architect to perform its services.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish, in consultation with the Architect and the Construction Manager, the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner

and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project, to the extent expressly permitted by applicable law and/or policy. The Owner shall render decisions and approve the Architect's properly submitted submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

§ 5.6 The Owner upon reasonable advance written request of the Architect, the Owner will directly contract for geotechnical, surveying, and construction material testing, or authorize the Architect to furnish them as a Change in Services, when such services are reasonably required by the scope of the Project and to the extent not included in Architect's services hereunder. The Architect shall assist with soliciting proposals and provide recommendations for the terms of such agreements as necessary.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

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

§ 5.10 The Owner shall, upon the Architect's written request, 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.

§ 5.11 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.

§ 5.12 The Owner shall use reasonable efforts provide prompt written notice to the Architect and Construction Manager 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; provided that the failure of the Owner to provide such notice shall not waive any of Owner's rights or remedies under this Agreement or otherwise.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of

any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

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

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

§ 5.16 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

§ 5.17 The Owner shall contract separately for the consulting services in this Article 5. Unless otherwise indicated herein, the services to be provided by Owner's consultants shall be performed by licensed professionals who shall affix their seals on the appropriate documents prepared by them. The Owner shall require its consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflicts. The Architect shall have no responsibility for the components of the Project designed by Owner's consultants or for the adequacy of their drawings or other documentation. Review by the Architect of the work product of Owner's consultants is solely for consistency with the Architect's design concept of the Project. The Architect shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by those consultants in connection with such work product and shall not be required to review or verify calculations, designs or other documentation for compliance with applicable codes, laws, ordinances, rules and regulations nor shall Architect be responsible to discover errors or omissions in such documents or services. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect and its consultants from and against all claims, damages, losses and expenses, including attorney's fees, arising out of services performed by Owner's consultants even if Owner contends the Architect or its consultants should have discovered errors or omissions in the services of Owner's consultant.

§ 5.18 If the Owner deviates from or authorizes deviations, recorded or unrecorded, from the Contract Documents without the written agreement of the Architect, the Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect and its consultants from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from such deviations.

§ 5.19 The Owner shall include in all contracts for construction Articles 3.5 and 3.18 of the AIA A-201 General Conditions of the Contract for Construction, 2017 Edition.

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

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total actual cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the 80% of the value of alternates not accepted by the Owner as determined by alternate bid prices, and the Construction Manager's general conditions costs, overhead, and profit. To the extent the Project is not completed, the Cost of the Work shall be the Bidders' aggregate bid prices, as modified by any Change Orders then executed. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner. The Cost of the Work does not include components of the Work designed by the Architect as an Additional Service, and Architect's compensation for such services shall be only as provided in Article 4.

§ 6.2 The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.



§ 6.3 The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. At the commencement of construction, the design contingency shall be reduced to three (3%) percent of the construction budget to cover ambiguities, inconsistencies, incompleteness, errors or omissions in the drawings, specifications or other documentation furnished by the Architect. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.3.1 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work together to reconcile the cost estimates.

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

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

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1.

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

## ARTICLE 7 INSTRUMENTS OF SERVICE

§ 7.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. Provided the Owner is not in default under this Agreement, the Owner owns the Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights, and the Architect hereby waives all common law, statutory and other reserved rights, including copyrights, in and to the Instruments of Service. Provided the Owner is not in default under this Agreement, the Owner may use the Instruments of Service for future additions or alterations to this Project or for other projects, which use shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

The Owner agrees to and does hereby grant and transfer to the Architect an exclusive, royalty-free license to all such data and documents which the Owner may obtain by copyright and of all designs and specifications as to which the Owner may assert any rights or establish any claim under prevailing patent or copyright laws. In the case of future reuse of any of the documents by the Owner, the Architect's and registrant-consultant's name and seal shall be removed from the reused document(s) and the Architect and its registrant-consultants shall bear no responsibility and shall not be liable to the Owner or to third parties for their reuse. Architect is entitled to use its standard details and specifications for components of the Project for future projects without asking for prior permission from the Owner.



**§ 7.2** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service or obtaining the written consent of the Architect other than for this Project, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Architect and its consultants from all claims, liabilities, damages, losses, 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 7.2. The terms of this Section 7.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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

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

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

**§ 7.4.3** The Electronic Instruments of Service are provided for the sole purpose of communicating the state of the design to date, and the Owner and Construction Manager acknowledge that such Electronic Instruments of Service may not be final or complete. The Owner and Construction Manager acknowledges that use by Owner and/or Construction Manager or their Contractors of the Electronic Instruments of Service is at their own sole risk and responsibility. Under no circumstances shall such Electronic Instruments of Service be used on other projects, for additions to the Project or completion of this Project by another design professional without the written consent of the Architect. Any such use or reuse by the Owner and/or Construction Manager or others without the written consent of the Architect for the specific purpose intended shall be at each of their sole risk and without liability to the Architect. The Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect and its consultants from all claims, liabilities, damages, losses and expenses, including attorney's fees, arising out of or resulting from the Owner and/or Construction Manager's use or reuse of Electronic Instruments of Service or any use in violation of any terms of this Article. Any such consent or adaptation for use shall entitle the Architect to further compensation at rates to be mutually agreed upon by the Owner and Architect.

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

**§ 7.4.5** The Owner and/or its Construction Manager acknowledge and understand that the use and automated conversion of information and data in the Electronic Instruments of Service provided by the Architect to a derivative work, model, or alternate system, format or version by the Owner and/or its Construction Manager may not be accomplished without the introduction of inexactitudes, anomalies, or errors. In the event the Electronic Instruments of Service provided are so used or converted, the Owner agrees to assume all risks associated therewith and releases the Architect from such responsibility, and to the fullest extent permitted by law, the Owner shall defend, indemnify, and hold harmless the Architect and its consultants from and against all claims, liabilities, losses, damages and expenses, including, but not limited to, attorney's fees, arising in connection therewith.

§ 7.4.6 The electronic data files are intended to work only as described in the Agreement. These files are compatible only on AutoCAD 2019 or Revit Architecture 2019 or later releases. The Owner shall verify drawing release number and file format with the Architect at the time the files are transmitted. The Architect makes no warranty as to the compatibility of the Electronic Instruments of Service.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 Causes of action by the parties to this Agreement pertaining to the performance and/or breach of this Agreement shall be deemed to have accrued and the applicable statutes of limitation and repose shall operate as provided by Illinois law.

§ 8.1.2. The Owner shall name or require that its contractor(s) name the Architect as an additional insured under any Builders Risk or property insurance policy maintained on the Project.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers, officials, contractors, volunteers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement or a breach of this Agreement.

§ 8.1.4 The Architect shall indemnify, defend, and hold the Owner and the Owner's officers, officials, contractors, volunteers and employees harmless from and against any and all claims, demands, causes of action, losses, liabilities, judgments, damages, penalties and fines, including reasonable attorneys' fees and court costs, to the extent arising from claims by third parties for personal injury or property damage resulting from the negligent actions or omissions of the Architect or its employees or its consultants.

### § 8.2 Mediation

§ 8.2.1 In the Owner's sole and exclusive discretion, any claim, dispute, or other matter in question arising out of or related to this Agreement may be subject to mediation upon written demand by the Owner. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by litigation. Prior to the initiation of mediation pursuant to the Owner's written demand, each party shall designate a representative and shall meet within five (5) days after service of the notice of intent to mediate. The parties shall attempt to resolve the dispute through negotiation within ten (10) days of the meeting. Should the parties be unable to agree on a resolution within such ten (10) day period, the parties shall proceed to mediation as set forth herein.

§ 8.2.2 If the Owner elects mediation in its sole discretion, the parties to the mediation 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.

§ 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.)*

☒ In the Owner's sole discretion, arbitration pursuant to Section 8.3 of this Agreement, and otherwise, litigation in a court of competent jurisdiction.

☐ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

<< >>

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

§ 8.3 In the sole and exclusive discretion of the Owner, all claims, disputes and other matters in question between any of the Owner, Architect, Construction Manager, Contractor, Subcontractor and/or any material supplier arising out of, or

relating to, agreements to which two or more of said parties are bound, or the Contract Documents or the breach thereof, or in any way related to the Project, shall be decided by arbitration. In the event of such election by the Owner, such arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect, as modified herein. In the event of such election by the Owner, the arbitrator(s) shall make separate findings as to liability and the amount of damages with respect to each party to the arbitration to the extent any liability or responsibility for damages exists. In the event of such election by the Owner, the Architect, Construction Manager, Contractors, Subcontractors, and material suppliers who have an interest in the dispute, shall be joined as parties to the arbitration. In the event of such election by the Owner, the arbitrator(s) shall have authority to decide all issues between the parties including but not limited to claims for extras, delay and liquidated damages, matters involving defects in the Work, right to payment, and whether the necessary procedures for arbitration have been followed. The foregoing option of the Owner to arbitrate, having been duly consented to by the parties, shall be specifically enforceable by the Owner under the prevailing arbitration law. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**§ 8.3.1** In the event of such election by the Owner, the Owner shall file notice of demand for arbitration in writing with the other part(ies) to the arbitration and with the American Arbitration Association. Such demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or repose. Whether such limitations have been met shall be decided by the arbitrator if contested by a party. All parties shall carry on the Work and perform their duties during any arbitration proceedings, and the Owner shall continue to make payments to the extent required by agreements and contract documents. However, at the request of any party, contested payments may be placed in an escrow account pending resolution of the dispute.

**§ 8.3.2** In addition to the other rules of the American Arbitration Association applicable to any arbitration hereunder, the following shall apply if the Owner elects arbitration:

.1 Promptly after the impaneling of the arbitrator, the arbitrator shall establish a procedure for each party to set forth in writing and to serve upon each other party a detailed statement of its contentions of fact and law, along with appropriate responses thereto;

.2 All parties to the arbitration shall be entitled to reasonable discovery procedures as provided by the Illinois Code of Civil Procedure and Illinois Supreme Court Rules, as supplemented by rules to be established by the arbitrator;

.3 The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein. Similarly, the scope of discovery, and the extent of proceedings hereunder relating to discovery, shall be consistent with the parties' intent that the arbitration be conducted as expeditiously as possible.

## **ARTICLE 9 TERMINATION OR SUSPENSION**

**§ 9.1** If the Owner fails to make payments to the Architect for services properly performed and billed to the Owner and expenses properly incurred and billed to the Owner in accordance with this Agreement, such failure shall be considered cause for suspension of performance of services under this Agreement. Prior to such suspension, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect for such services and expenses properly incurred and billed. Upon resumption of the Architect's services, the Architect's fees for the remaining services and the time schedules shall be adjusted if the suspension exceeds thirty (30) days.

**§ 9.2** 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.

**§ 9.3** 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.

§ 9.4 If the Owner terminates this Agreement for its convenience pursuant to Section 9.3, or the Architect terminates this Agreement pursuant to Section 9.2, the Owner shall compensate the Architect for services performed prior to termination, and Reimbursable Expenses properly incurred and due, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.5 In addition to any amounts paid under Section 9.4, if the Owner terminates this Agreement for its convenience pursuant to Section 9.3, or the Architect terminates this Agreement pursuant to Section 9.2, the Owner shall pay to the Architect the following fees:

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

.1 Termination Fee:

<< >>

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

<< >>

§ 9.6 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.5.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Illinois without regard to conflict of law principles.

§ 10.2 Terms in this Agreement, not defined herein, shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, as amended and included in the Project Manual. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

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

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

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

§ 10.7 Upon the Architect's receipt of prior written consent from the Owner, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information or any other information prohibited by law from disclosure. The Owner may provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.2.

**§ 10.8** The Architect shall maintain the confidentiality of all information in its possession regarding the Project and this Agreement, and shall require similar agreements with its consultants to maintain the confidentiality of all information regarding the Project and this Agreement subject to applicable law. The Architect shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 and applicable law. This Section 10.8 shall survive the termination of this Agreement.

**§ 10.8.1** The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

**§ 10.10** Notwithstanding any provision of this Agreement to the contrary, the Owner's review and approval of any and all documents or other matters required herein shall be for the purpose of providing the Architect with information as to the Owner's objectives and goals with respect to the Project and not for the purpose of determining the accuracy, completeness or correctness of such documents and shall in no way create any liability on the part of the Owner (notwithstanding any professional skill and judgment possessed by the Owner) for errors, inconsistencies or omissions in any approved documents.

**§ 10.11** Equal Opportunity Employer. The Architect is an equal opportunity employer and the requirements of 44 Ill. Adm. Code 750 APPENDIX A and Chapter 13 ("Human Rights") of the Oak Park Village Code are incorporated herein by reference.

**§ 10.11.1** The Architect shall not discriminate against any employee or applicant for employment because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. The Architect shall comply with all requirements of Chapter 13 ("Human Rights") of the Oak Park Village Code.

**§ 10.11.2** In the event of the Architect's noncompliance with any provision of Chapter 13 ("Human Rights") of the Oak Park Village Code, the Illinois Human Rights Act or any other applicable law, the Architect may be declared non-responsible and therefore ineligible for future Agreements or subcontracts with the Village, and the Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

**§ 10.11.3** In all solicitations or advertisements for employees placed by it on its behalf, the Architect shall state that all applicants will be afforded equal opportunity without discrimination because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work.

**§ 10.12** Binding Authority. The individuals executing this Agreement on behalf of the Architect and the Owner represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

**§ 10.13** Effective Date. The effective date of this Agreement shall be the last date of its execution by one of the parties as reflected below.



## ARTICLE 11 COMPENSATION

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

- .1 Stipulated Sum  
(Insert amount)

« Two million, one hundred forty-four thousand dollars (\$2,144,000.00) »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, 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.)

« § 4.1.1.1 Enhanced Commissioning Fee: Forty-one thousand, eight hundred dollars (\$41,800.00) »

« § 4.1.1.1 Building Envelope Commissioning Fee: Fifty-three thousand, nine hundred dollars (\$53,900.00) »

« § 4.1.1.2 and § 4.1.3 Sustainable Project Services: If the Owner pursues LEED Certification (Certified of Silver) for the new construction work, Architects will be compensated a fee of One hundred thirty-four thousand, nine hundred fifty-four dollars (\$134,954.00). The fee includes LEED Consulting by Architect, Energy Modeling, USGBC registration, pre-certification, and certification review fees. This fee does not include net-zero consulting services. »

« § 4.1.1.3 Environmental Consulting Services Fee:

- |                                     |                               |
|-------------------------------------|-------------------------------|
| 1. Asbestos Inspection and Testing  |                               |
| a. Cost includes 150 bulk samples   | \$4,950.00                    |
| b. Additional samples (if required) | \$35.00 each                  |
| 2. Limited Non-HUD Lead Survey      | \$1,320.00 (for firing range) |
| 3. Asbestos & Lead Project Design   | \$2,200.00 »                  |

« § 4.1.1.4 ALTA Topographic Survey Fee: \$16,940.00

« § 4.1.1.4 As-Built Survey Fee: \$7,700.00

§ 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.)

« At an hourly rate or lump sum fee as approved by the Owner »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus « Ten » percent ( « 10 » %), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.) Such compensation shall be subject to the subsequent written agreement of the parties.

« »

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

Schematic Design Phase	« fifteen »	percent (	« 15 »	%)
Design Development Phase	« twenty »	percent (	« 20 »	%)
Construction Documents Phase	« thirty-five »	percent (	« 35 »	%)
Procurement Phase	« five »	Percent (	« 5 »	%)
Construction Phase	« twenty »	percent (	« 25 »	%)
Total Basic Compensation	one hundred	percent (	« 100 »	%)



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

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

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

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

« See Exhibit A for hourly rates »

Employee or Category	Rate (\$0.00)

## § 11.8 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project outside the scope of the Basic Services;
- .7 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .8 Site office expenses;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants.

« »

## § 11.10 Payments to the Architect

### § 11.10.1 Initial Payments

§ 11.10.1.1 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.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « zero » (\$ « 0 » ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

## § 11.10.2 Progress Payments

§ 11.10.2.1 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable and interest in accordance with the Local Government Prompt Payment Act.

§ 11.10.2.2 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times and shall be maintained by the Architect for three (3) years after Final Completion.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:  
(Include other terms and conditions applicable to this Agreement.)

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

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

Architect  
FGM Architects Inc.  
1211 W. 22nd Street; suite 700  
Oak Brook, Illinois 60523

Owner  
Village of Oak Park  
123 Madison Street  
Oak Park, Illinois 60302  
Attn.: Village Manager»

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as amended.
- .2 Exhibits:  
(Check the appropriate box for any exhibits incorporated into this Agreement other than those referenced above.)

[ ☐ ] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition dated as indicated below.  
(Insert the date of the E234-2019 incorporated into this agreement.)

« »

[ ☒ ] Other Exhibits incorporated into this Agreement:  
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« Exhibit A – Oak Park Police Department Space Needs Assessment dated November 25, 2019 »

« Exhibit B – Hourly Rate Chart »

- .4 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

\_\_\_\_\_  
**OWNER** (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

Date: \_\_\_\_\_, 2020

**ATTEST**

\_\_\_\_\_  
By: Vicki Scaman  
Its: Village Clerk

Date: \_\_\_\_\_, 2020

\_\_\_\_\_  
**ARCHITECT** (Signature)

« John C. Dzarnowski »« President »

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

Date: \_\_\_\_\_, 2020

\_\_\_\_\_  
**ARCHITECT** (Signature)

« Raymond K. Lee »« Vice-President »

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

Date: \_\_\_\_\_, 2020

**ATTEST**

\_\_\_\_\_  
By: Diane Gilmartin  
Its: Chief Financial Officer

Date: \_\_\_\_\_, 2020