RESOLUTION 11-90  Passed December 12, 2011

AUTHORIZING THE MAYOR OF THE CITY OF DEKALB, ILLINOIS, TO SIGN AN AGREEMENT WITH PSA DEWBERRY, FOR THE ARCHITECTURAL DESIGN OF A NEW POLICE STATION ON WEST LINCOLN HIGHWAY IN THE AMOUNT OF $799,500.00.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb be authorized and directed to execute an Agreement with the architectural firm of PSA Dewberry, Inc., to provide architectural design services for the construction of a new police station on West Lincoln Highway, at a fee not to exceed eight hundred seven thousand dollars ($799,500.00), a copy of which is attached hereto and made a part hereof as Exhibit “A.”

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 12th day of December, 2011 and approved by me as Mayor on the same day. Adopted by roll call vote: 4-3. Aye: Teresinski, Lash, Naylor, Baker. Nay: Jacobson, Gallagher, O'Leary.

ATTEST:

STEVE KAPITAN, City Clerk

KRIS POVLSEN, Mayor
AGREEMENT made as of the Tenth day of October in the year 2011
(In words, indicate day, month and year)

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

City of Dekalb
200 South Fourth Street
Room 210
Dekalb, IL 60115

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

PSA-Dewberry Inc.
25 S. Grove Avenue, Suite 500
Elgin, IL 60120
Phone: 847-841-0614
Fax: 847-695-6579

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

A new Dekalb Police Facility consisting of approximately 35,000 - 45,000 SF with an estimated Project Cost of $12M to be built on the designated 3.0 acre site located on West Lincoln Highway. Determination of the final program requirements for the project shall be finalized within thirty (30) days of the Project Kick-Off Meeting.

Provide an early site package for site clearing and existing utility relocation to be construction in the Fall of 2011 to allow the site to be prepared for a Spring 2012 construction start.

The Owner and Architect agree as follows.
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## EXHIBIT A INITIAL INFORMATION

### ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Article 1, Initial Information:

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

The City of DeKalb Police Facility Needs Assessment Study prepared by the Architect though a separate agreement with the Owner, shall be incorporated into this Agreement as a reference document for the Programming Phase. This document contains the space needs analysis for an approximately 56,000 square foot facility.

The Architect shall explore the conceptual design development of up to (3) concept design with the input and collaboration of the CMC. The selection of the concept design shall be finalized within thirty (30) days of the Project Kick-Off Meeting and become the basis for design in the Schematic Design, Design Development and construction Document Phase.

**§ 1.2** Subject to amendment by the Owner and as provide herein, the Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

1. **Commencement of construction date:**
   - Site Clearing - Fall 2011

2. **Substantial Completion date:**
   - Site Clearing - Two (2) months from commencement.
§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect’s services and the Architect’s compensation.

ARTICLE 2 ARCHITECT’S RESPONSIBILITIES
§ 2.1 The Architect shall provide the professional services as set forth in this Agreement. The Architect’s responsibilities will be executed with the knowledge that the Owner will retain a Construction Manager at Risk (CMC) for the Project. The CMC shall provide pre-construction phase services including, but not limited to, preparation of estimates of the Cost of the Work.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. In rendering services hereunder, the Architect acknowledges that the same are being performed on behalf of the Owner. Before the Architect submits his first invoice for professional services to the Owner, the Architect shall prepare for the Owner’s review and approval a comprehensive schedule of the performance of the Architect’s services and those of the Consultants. This schedule shall indicate dates of (or, where applicable, periods of elapsed time allowed for) Owner approvals, dates when specific information is required by the Architect from the Owner, and anticipated approval periods required for public authorities having jurisdiction over the Project. Once submitted by the Architect, the Architect will be bound by that schedule and will not deviate from it without prior written authorization by the Owner. Whether or not deviations from the schedule have been authorized by the Owner, the Architect shall update this schedule as necessary to reflect Owner-approved changes or unavoidable deviations, indicating probable impacts of those deviations on the performance of the Architect’s services and the Project. However, nothing in this Agreement shall be construed as a waiver of the Owner’s right to obtain compliance by the Architect with Owner-approved schedules. The Architect shall notify the Owner in writing immediately upon the Architect’s determination that Changes in Services are needed and justified. The Architect shall indicate in that notice (a) the scope of the change, (b) the reason for the change, (c) the party, if any, whose acts or omissions the Architect believes resulted in the proposed change, (d) the estimated financial and schedule impacts on the change, and (e) a definitive statement of fees due the Architect for professional services and expenses related to such change. In addition to any other remedies available to the Owner under this Agreement or under law, if the change was the result, in whole or in part, of error, omission, inconsistency, or lack of clarity in the Contract Documents or was otherwise avoidable by full performance by the Architect, the professional services required to implement the change shall be performed by the Architect and his Consultants at no cost to the Owner. The Architect agrees that its designs, Construction Documents, and Services shall conform to all applicable federal, state, and local statutes and regulations governing its Services, the Project, and the Work. The Architect agrees and acknowledges that by signing drawings or preparing Construction Documents to submit for purposes of obtaining building and other governmental permits, the Architect has taken reasonable measures to ascertain what codes apply to the Project and has applied them accordingly, including, but not limited to, those that relate to hazardous materials, restrictions on development of wetlands, and accessibility for the physically challenged.

§ 2.3 The Architect shall identify Larry J. Hlavacek as a representative authorized to act on behalf of the Architect with respect to the Project. The named individual(s) on behalf of the Architect shall remain in that position for the duration of the Project unless he or she leaves the employment of Architect or his or her removal is agreed to by Owner in writing. In the event such person is replaced because such person has left the employment of Architect, then the individual designated as the replacement shall be as agreed upon between Architect and the Owner. In the event of such replacement the Architect agrees that the design team shall meet with the Owner or Board of Owner to review individual roles and responsibilities for completion of the Project. Time spent by the Architect to comply with these provisions shall be deemed part of the Architect’s basic services.

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

§ 2.5 The Architect shall maintain insurance in the limits listed below. In addition, to the extent that the activities or services of engineers or consultants are not covered by the Architect’s Professional Liability Insurance, Architect shall cause each engineer and consultant, before the time such engineer or consultant shall commence any work relating to

Init.

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the Project, to maintain a policy of professional liability insurance with the same limits as stated above. The policies of insurance to be provided pursuant to this provision may be on a "claims made" basis provided that at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy or policies with terms and conditions and in amounts which comply with the terms of this Agreement and which provide for retroactive coverage to the date of cancellation or non-renewal to fill any gaps in coverage which may exist due to the cancellation or non-renewal of the prior "claims made" policy or policies. With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three years from the date of completion of the project. The Owner shall be named as an additional insured on the General Liability and Automobile Liability policies. Proof of such insurance shall be submitted to the Owner before submittal of the first invoice to the Owner. The insurance policies shall incorporate a provision requiring written notice to the Owner of at least thirty days prior to any cancellation, or nonrenewal, of a policy. All insurance provided hereunder must be with an insurance company licensed or authorized to do business in the State of Illinois and carry a Best's Insurance Rating of A- or better. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

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

.1 General Liability

$5,000,000 aggregate; $1,000,000 per occurrence

.2 Automobile Liability

$1,000,000 per occurrence

.3 Workers' Compensation

Statutory Limit

.4 Professional Liability

$5,000,000 per claim/aggregate

.5 Employer's Liability

$1,000,000 aggregate; $1,000,000 per occurrence

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include services by the Architect, its employees and Consultants for usual and customary architectural and landscape architecture services and structural, mechanical, electrical, plumbing and fire protection engineering services necessary to completely design the Project and prepare the documents that are necessary to fully indicate the requirements for construction. Services not set forth in Article 3 are Additional Services, unless designated as part of Basic Services.

§ 3.1.1 The Architect shall perform the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information. Further, Architect will provide prompt written Notice to Owner if Architect becomes aware of any fault or defect in the Project, including errors, omissions, or inconsistencies in the Architect's Instruments of Service.

§ 3.1.3 Not Used.
§ 3.1.4 The Architect shall not be responsible for an Owner’s directive or substitution made without the Architect’s knowledge.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall prepare design and documents in accordance with applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review, with Owner, the program prepared by Architect under separate agreement, and shall review laws, codes, and regulations applicable to the Architect’s services and prepare designs and documents accordingly.

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

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

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

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

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

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

§ 3.2.6 The Architect shall review the estimate of the Cost of the Work prepared by the CMC in accordance with Section 6.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner for review and to the Construction Manager for the preparation on an estimate of the Cost of the Work, and request the Owner’s approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.2 The Architect shall submit the Design Development documents to the Owner for review and to the Construction Manager to provide any updates to the previously prepared estimate of the Cost of the Work, and request the Owner’s approval.

§ 3.3.3 The Architect shall review the updated estimate of the Cost of the Work and Guaranteed Maximum Price prepared by the CMC in accordance with Section 6. If that estimate or GMP does not conform to the initial Owner-provided preliminary construction cost budget, and any Owner-approved amendments, the Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Construction Cost within the preliminary construction cost budget. In addition, in the event the Guaranteed Maximum Price exceeds the preliminary construction cost budget, the Architect, in consultation with and at the direction of the Owner, shall provide such modification in the design documents at no additional cost as shall be necessary to bring the cost of the Project within the Project’s budget as established pursuant to the provisions of this Agreement.

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

§ 3.4.2 The Architect shall prepare Construction Documents that conform with applicable laws, codes, ordinances, regulations, and other requirements of governmental authorities having jurisdiction over the Project.
§ 3.4.3 During the development of the Construction Documents, the Architect, as requested, shall assist the Owner and/or CMC in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. It is anticipated that the Architect shall prepare a maximum of two (2) Bid Packages for the Project, consisting of one Bid Package for Site Clearing and one Bid Package for Building Construction. If additional Bid Packages are requested by Owner, Architect shall be entitled to additional compensation as negotiated.

§ 3.4.4 The Architect shall review the updated estimate of the Cost of the Work prepared by the CMC based on the Construction Documents produced by the Architect and projected to the scheduled date of completion of the bidding and negotiation phase.

(Paragraph deleted)
§ 3.4.4 The Architect shall submit the Construction Documents to the Owner for review and to the Construction manager to provide any updates to the previously prepared estimate of the Cost of the Work, and request the Owner’s approval.
§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES
§ 3.5.1 GENERAL
The Architect, following the Owner’s approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner and the Owner’s CMC in obtaining bids. The Owner’s CMC shall, with the Owner’s approval, award and prepare contracts for construction.

§ 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 Contractor as set forth below and in AIA Document A201™—2007, General Conditions of the Contract for Construction. If the Owner and CMC modify AIA Document A201—2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

§ 3.6.2 EVALUATIONS OF THE WORK
§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the state of construction, as identified in Article 12, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents and the construction schedule. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) observed deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) apparent defects and deficiencies observed in the Work.

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

§ 3.6.2.3 The Architect shall interpret and advise the Owner of that interpretation on matters concerning performance of the Owner and CMC under, and requirements of, the Contract Documents on written request of either the Owner or CMC. The Architect’s response to such requests shall-be made in writing within any time limits agreed upon or otherwise with reasonable promptness. Nothing in this Agreement, nor in A201-2007, shall make a decision of the Architect binding upon the Owner in the absence of the Owner’s express written approval thereof.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When approved in writing by the Owner in advance, the Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
3.6.2.5 Unless the Owner and CMC designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and CMC as provided in the Contract Documents.

3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the CMC’s right to payment, or (4) ascertained how or for what purpose the CMC has used money previously paid on account of the Contract Sum. Architect, however, prior to issuing any Certificate of Payment to Owner, shall require CMC and their Prime Subcontractors to provide with their requests for payment Sworn Statements of Contractor and Subcontractor, Waivers of Lien to Date, and Final Waiver of Liens in the forms of the three documents attached to this Agreement. Owner shall require the CMC in its contract with the CMC to use said forms. Pay recommendations in the form of Certificate of Payment from Architect to Owner shall be based on Architect’s examination of said completed forms of documents. Architect shall not be required to look beyond those documents, unless otherwise required in this Agreement, in the process of issuing Certificates of Payment to Owner except to inform Owner of any information Architect otherwise possesses bearing upon and relevant to the pay request.

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 CMC’s submittal schedule and shall not unreasonably delay or withhold approval. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect’s professional judgment to permit adequate review, but in no event shall the Architect’s action be more than fourteen (14) days after the Architect’s receipt of submittal.

3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the CMC’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the CMC’s responsibility. The Architect’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. 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 CMC to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the CMC that bear such professional’s seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Any delegation of design responsibility must specifically be authorized in writing, in advance, by the Owner.
§ 3.6.4.4 Subject to the provisions of Section 4.3.2.2, 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 include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information. The Architect shall acknowledge the receipt of each Contractor or CMC generated request for information within seven (7) days after receiving it. The Architect shall issue a written answer for each such request simultaneously to the CMC and the Owner (along with necessary descriptive drawings, specifications. Or other documents) with the promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten (10) days after the request is received by the Architect.

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

§ 3.6.5 CHANGES IN THE WORK
§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall review and recommend Change Orders and Construction Change Directives, prepared by the CMC with supporting documentation as deemed necessary by the Owner, for the Owner’s approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 PROJECT COMPLETION
§ 3.6.6.1 The Architect shall assist the CMC in conducting site visits to determine the date or dates of Substantial Completion and the date of final completion. The Architect, if requested by CMC, shall review written warranties and related documents required by the Contract Documents and assembled by the CMC, to be delivered to the Owner.
§ 3.6.6.2 The Architect’s site visits shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.
§ 3.6.6.4 As part of the basic services provided by the Architect, during the tenth month after the date of substantial completion, the Architect shall visit the Project to review the work and shall prepare a report to be issued to the Owner and the Contractor indicating outstanding work to be corrected and warranty issues to be addressed by the Contractor. The Architect shall, as an additional service, assist the Owner in taking necessary action to see that the deficiencies are corrected. In addition, as part of the Architect’s basic services, the Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any arbitration, legal proceeding, or administrative law proceeding to which the Architect is a party concerning the Project.

(Paragraph deleted)

ARTICLE 4 ADDITIONAL SERVICES
§ 4.1 Before any Additional Services are performed they must be requested or confirmed by the Owner in writing. In the event the Owner requests a service that the Architect believes to be an Additional Service or outside the scope of the Basic Services the Architect shall, before performing those services, inform the Owner in writing of the Architect’s belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested. Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect’s responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. (Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)
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<tr>
<td>§ 4.1.11 Detailed cost estimating</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.12 On-site project representation</td>
<td>Not Provided</td>
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<td>§ 4.1.13 Conformed construction documents</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.14 As-designed record drawings</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.15 As-constructed record drawings</td>
<td>See Article 12</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.16 Post occupancy evaluation</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.17 Facility Support Services (B210™—2007)</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.18 Tenant-related services</td>
<td>Not Provided</td>
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<tr>
<td>§ 4.1.19 Coordination of Owner’s consultants</td>
<td>Not Provided</td>
<td></td>
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<tr>
<td>§ 4.1.20 Telecommunications/data design</td>
<td>See Article 12</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.21 Security Evaluation and Planning</td>
<td>See Article 12</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.22 Commissioning</td>
<td>See Article 12</td>
<td></td>
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<tr>
<td>§ 4.1.23 Extensive environmentally responsible design</td>
<td>Not Provided</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.24 LEED® Certification</td>
<td>See Article 12</td>
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<tr>
<td>§ 4.1.25 Fast-track design services</td>
<td>See Article 12</td>
<td></td>
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<tr>
<td>§ 4.1.26 Historic Preservation (B205™—2007)</td>
<td>Not Provided</td>
<td></td>
</tr>
<tr>
<td>§ 4.1.27 Furniture, Finishings, and Equipment Design</td>
<td>See Article 12</td>
<td></td>
</tr>
</tbody>
</table>

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

See Article 12

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

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

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method;

2. Services necessitated by the Owner’s request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

(Paragraph deleted)

.6 Preparation of design and documentation for future building expansions increasing the building size to the original program size of approximately 56,000 square feet. The Architect shall prepare the building expansions as alternate bids. Compensation shall be as provided in Section 11.3.;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing. A maximum of three (3) meetings shall be provided as part of Basic Services.;

.8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.9 Evaluation of the qualifications of bidders or persons providing proposals;

.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or

.11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 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 the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a CMC's submittal out of sequence from the submittal schedule agreed to by the Architect (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner);

.2 Responding to the CMC's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the CMC from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, CMC-prepared coordination drawings, or prior Project correspondence or documentation (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner);

.3 Preparing Change Orders and Construction Change Directives that require evaluation of CMC's proposals and supporting data, or the preparation or revision of Instruments of Service (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner if such Change Order is caused by the CMC);

.4 Evaluating an extensive number of Claims as the Initial Decision Maker;

.5 Evaluating substitutions proposed by the Owner or CMC and making subsequent revisions to Instruments of Service resulting therefrom (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner when such substitution is requested by CMC); or

.6 Providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner when such delay is caused by the CMC).

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

.1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor (a deductive change order to the CMC's contract sum will be processed periodically for the cost of such services incurred by the Owner)

.2 Sixty (60) four (4) hour weekly visits to the site by the Architect over the duration of the Project during construction

.3 Nine (9) visits to determine whether the Work is substantially complete in accordance with the requirements of the Contract Documents to include:

(2) above ceiling (1st and 2nd Floor)
(3) building architectural (1st floor, 2nd floor, Exterior)
(2) building MEP/Tech (1st floor, 2nd floor)
(1) Civil
(1) Landscaping

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User Notes: (2050442806)
(a deductive change order to the CMC’s contract sum will be processed periodically for the cost of such services incurred by the Owner)

.4 five (5) visits to determine final completion to include:
(3) building architectural (1st floor, 2nd floor, exterior)
(2) building MEP/tech (1st floor, 2nd floor)
(a deductive change order to the CMC’s contract sum will be processed periodically for the cost of such services incurred by the Owner)

§ 4.3.4 If the services covered by this Agreement have not been completed within twenty-two (22) months of the date of this Agreement, through no fault of the Architect, extension of the Architect’s services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER’S RESPONSIBILITIES

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

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

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

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

(Paragraph deleted)

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

§ 5.6 The Architect or CMC, as appropriate, shall coordinate its Services and those of its Consultants with services provided by the Owner. Upon the Architect’s request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided. The Owner shall indemnify, defend and hold harmless the Architect and the Architect’s consultants and their respective employees, agents and representatives from any and all claims arising out of the services and information furnished by the Owner and the Owner’s consultants.

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

Init.

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User Notes:

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§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner’s needs and interests. Such services shall include auditing services the Owner may require to verify the CMC’s Application for Payment or to ascertain how or for what purpose the CMC has used the money to be paid by or on behalf of the Owner. The Owner shall provide the Architect with a copy of any agreement between the Owner and the CMC regarding the Project.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect’s Instruments of Service, provided nothing in this Agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect’s Services.

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

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

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

(Article deleted)

ARTICLE 6 GUARANTEED MAXIMUM PRICE

§6.1 The term ‘Cost of the Work’ shall mean only the direct costs incurred by the Owner in the proper performance of the work to construct all elements of the Project designed or specified by the Architect in accordance with the contract documents and any additions or changes thereto, and shall include the CMC’s general conditions, as approved by the Owner. The Cost of the Work does not include the compensation of the Architect, the compensation of the CMC, the costs of the land, rights-of-way, contingencies for damages in the Work or other costs that are the responsibility of the Owner. At the end of the Design Development Phase, the CMC, in consultation with the Architect, shall prepare a Guaranteed Maximum Price proposal for the Owner’s review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the CMC’s final estimate, prepared in consultation with the Architect, (which final estimate shall include or be based on the estimated cost, at current market rates, of labor and materials to be expended on the Project, including those furnished by the Owner and those specified by the Architect), and including a reasonable itemized allowance for contingencies. The final estimate shall not include the compensation of the Architect or items excluded from the definition of the Cost of Work.

§ 6.2 Not Used.

§ 6.3 The CMC shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the CMC, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

(Articles deleted)

§6.4 At appropriate intervals during the Construction Document Phase, Architect shall provide CMC with progress documents for CMC review against the Guaranteed Maximum Price.

§6.5 Evaluation of Owner’s Project budget, and detailed estimates of the Cost of the Work will be prepared by the CMC. The Architect shall be entitled to rely upon cost estimates prepared by the CMC.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit
such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

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

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

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1.

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

§ 7.5 In addition, the parties recognize, for security purposes, the importance of keeping all plans and specifications regarding the Project confidential. Accordingly, the Architect shall maintain the confidentiality of all Project documents and shall not publish or in any way disseminate or distribute any project documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written permission of Owner.

ARTICLE 8 CLAIMS AND DISPUTES
§ 8.1 GENERAL
§ 8.1.1 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them in good faith. In the event negotiation fails to resolve any matter, then such claim, dispute or other matter in question arising out of or relating to this Agreement may, by agreement of the parties, be subject to mediation. Such mediation, however, shall not be a condition precedent to institution of legal or equitable proceedings by either party. An agreement reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. In the event the parties agree to mediation, the same shall be administered by the American Arbitration Association and conducted in accordance with its Construction Industry Mediation Procedures in effect on the date of the agreement to mediate. The expenses of witnesses, document or exhibit preparation and the like, for either side, shall be paid by the party producing such witnesses or incurring such expenses. All other expenses of the mediation, including required traveling and other expenses of the mediator, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. For the purpose of this Subparagraph, legal fees and costs of the parties shall not be considered a mediation expense.

In the event of litigation between the parties, the prevailing party shall be entitled to recover its costs, including
reasonable attorneys’ fees, and expert consultant fees. Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run either on the date of Substantial Completion (for acts or failures to act occurring prior to Substantial Completion of which the Owner was aware as a result of notice by the Architect) or upon the Owner’s discovery of damages to the Owner or the Project resulting in any part from the act or failure to act by the Architect, whichever is later.

§ 8.1.2 To the extent damages are covered by proceeds received by the claimant from property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein. The nature of the conduct that causes the damage shall not vitiate this waiver.

§ 8.1.3 The Architect and Owner waive incidental or indirect damages, including but not limited to loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental or indirect damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all incidental or indirect damages due to either party’s termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Not Used.

§ 8.2.2 Not Used.

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

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

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

[ X ] Litigation in a court located in Circuit Court of Dekalb County. Both parties specifically waive their right to a jury trial to resolve any and all claims, including but not limited to those sounding in contract, tort, or statute, against the other arising out of or connected in any way to the Project or this Agreement because the parties hereto believe that the complex commercial and professional aspects of their dealings with one another make a jury determination neither desirable nor appropriate.

[ ] Other (Specify)

§ 9.1 The Architect shall give the Owner twenty-one (21) days’ written notice of the Architect’s intention to terminate or suspend provision of Services. This notice shall detail the Architect’s specific reason or reasons for its intended termination or suspension and shall state with specificity the means by which the Owner may cure the alleged reason.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services full and satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules shall be equitably adjusted.
§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice. If not so terminated by the Architect, it shall be entitled to compensation as provided in Section 9.2 hereof.

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

§ 9.5 This Agreement may be terminated by the Owner, with or without cause, for the Owner's convenience upon not less than seven (7) days' written notice to the Architect. Should the Owner terminate this Agreement for cause, but that cause be subsequently found to be insufficient to support termination, the termination shall be deemed one of convenience.

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

(Paragraphs deleted)

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction, unless a contrary definition is set forth herein or inferable herefrom.

§ 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 or any interest or claim related to it or any monies due or to become due arising from 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. Any unauthorized assignment or transfer, except as noted above, shall be deemed void and invalid, the assignee shall acquire no rights as a result of such assignment and the non-assigning party shall not recognize any such 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. The Owner shall include this provision in its contract with the Contractor.

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

§ 10.7 The Architect may include in its portfolio or promotional materials exterior photographs and site plans of the Project; provided, however, images used may not include any proprietary or confidential information. Exterior photographs of the completed Project may be displayed by the architect in its promotional materials, but any display cannot include floor plans, security information, or other program-specific information without the advance written consent of the Owner.

§ 10.8 The Architect shall consider all Project-specific information, except Project name and location, to be confidential and proprietary to the Owner. All designs, drawings, Instruments of Service, specifications, models, computer models, and other products of the Architect's Services shall be deemed to be the Owner's confidential and proprietary information. No confidential and proprietary information of the Owner shall be disclosed to others by the Architect.
Architect except to: (1) the Architect’s Consultants and employees as necessary to perform their portion of the Services; (2) those who have an official need to know the content of the information in order to perform services or construction solely and exclusively for this Project; (3) building and government officials who need to know the content of the information in order to approve construction, to administer laws, codes, and regulations, or to perform their duties as to this Project; and (4) Consultants and Contractors whose contracts include similar restrictions on the use of information as needed to preserve for the Owner the confidentiality of proprietary or Project-related information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect’s Basic Services described under Article 3 or elsewhere designated as Basic Services, the Owner shall compensate the Architect as follows:

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

Compensation for services shall be the Stipulated Sum of $812,500.00. This fee includes a Programming Needs Assessment Study as defined below:

Programming Needs Assessment Study
The Architect shall provide space needs assessment services intended to update the program to align with the Owner’s $12M project budget. In addition, programming studies shall be completed to identify and define future building expansion needs.

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

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

Other Additional Services designated in Section 4.1 shall be compensated as defined in Article 12.

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

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

Compensation for the additional services for the design of future building expansions as defined in Section 4.3.1.6 shall be provided as a Stipulated Sum of $227,500.00.

Hourly basis in accordance with attached Architect’s Standard Hourly Rates – Attachment A.

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus eight percent (8%), or as otherwise stated below:

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

<table>
<thead>
<tr>
<th>Schematic Design Phase</th>
<th>Twenty percent (20%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Development Phase</td>
<td>Twenty percent (20%)</td>
</tr>
<tr>
<td>Construction Documents Phase</td>
<td>Thirty-One percent (31%)</td>
</tr>
<tr>
<td>Bidding or Negotiation Phase</td>
<td>Two percent (2%)</td>
</tr>
<tr>
<td>Construction Phase</td>
<td>Twenty-Seven percent (27%)</td>
</tr>
</tbody>
</table>

Total Basic Compensation one hundred percent (100%)

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

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates and multiples for services of the Architect and the Architect’s consultants as set forth in this Agreement shall remain in force and unchanged for a period of one year from the date hereof. Thereafter, the same may be adjusted, on a one time basis each year, in accordance with their normal salary review practices, provided, however, that any increase shall be limited to a maximum of 4%. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See attached Architect’s Standard Hourly Rates – Attachment A.

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus zero percent (0%) of the expenses incurred.

(Paragraphs deleted)

§ 11.10 PAYMENTS TO THE ARCHITECT

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

§ 11.10.2 (Paragraphs deleted)

The Architect shall submit with each invoice a current, itemized cumulative statement of amounts invoiced, amounts received, reimbursable expenses invoiced and received, all other funds sought and received by the Architect, and remaining contract billing limits. When the Owner specifies that a payment is to be applied in satisfaction of a certain invoice or portion of an invoice, the Architect shall apply the payment to the account as specified and shall indicate that specific application on subsequent monthly statements. Payments shall be made in accordance with the Illinois Local Government Prompt Payment Act.

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be submitted to Owner when payment is requested.

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Init. / 

User Notes:
ARTICLE 12 SPECIAL TERMS AND CONDITIONS
Special terms and conditions that modify this Agreement are as follows:

See Other Conditions or Services (Article 12) pages 1 to 12, attached hereto and made part hereof.

ARTICLE 13 SCOPE OF THE AGREEMENT
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:
.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

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

Article 12 – Other Conditions or Services
Architect’s Standard Hourly Rates – Attachments A

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

OWNER – City of Dekalb

(Row deleted)

ARCHITECT- PSA-Dewberry Inc.

(Signature)

Crisp

(Printed name and title)

(Randall F. Gibson)

(Printed name and title)
New DeKalb Police Facility

ARTICLE 12
OTHER CONDITIONS OR SERVICES

The provisions of this Article 12 take precedence over any provision of the printed form B101 (2007 Edition) which is in conflict with this Article 12.

12.1 AGREED ESSENTIAL ADDITIONAL SERVICES FOR A POLICE FACILITY

Agreed Essential Additional Services that are typical for a Police Facility encompass Article’s 12.1.1 through 12.1.5. Architect shall provide these services for the Stipulated Sum of $267,000.

12.1.1 Civil Engineering On Site

The Architect shall provide Civil Engineering Services for site development and utilities including electrical, gas, water, storm water and sanitary sewer, yet excludes off site road and utility connections. These services will include the development of a site plan, grading plan, storm water retention/detention plan, water and sanitary sewer plan, dimensional control plan, storm water / sanitary sewer / water piping profiles, paving plan, drainage area map, erosion control plan, a Storm Water Pollution Prevention Plan, details and technical specifications. This Scope of Work is to be provided for the proposed, approximately 3.0 acre property on West Lincoln Highway. These services are based on the premise that all utilities will be brought to within the limits or boundary of the proposed site by other parties or the City. Plans and specifications will be prepared in two separate packages:

- Site Package 1- Site clearing and existing site utility relocation
- Site Package 2- Site development work associated with the construction of the new Police Facility

12.1.2 Technology Services

12.1.2.1 Data/Voice Structured Cabling System Planning and Design

The Architect shall provide Data/Voice Structured Cabling System planning and design for the project.

The Structured Cabling System scope of work shall include ANSI/EIA/TIA Standards Compliant cabling systems (Category 6, fiber, etc.), telecommunications and equipment room layouts and cross-connect fields, Transient Voltage Surge Suppression (TVSS) Work Are Outlet (WAO) floor plans, cable tray distribution, MATV distribution, fiber optic connections and riser diagrams. This Scope of Work includes design approval by in-house Registered Communications Distribution Designer (RCDD), technical specification writing, detailed drawing development, coordination of WAO placement and furniture design, review of proposals and shop drawings submittals, interim and final inspection and approval of certified structured cabling system testing for 20-year warranty.

12.1.2.2 Security Systems

The Architect will provide Security Systems planning and design for the project.

Access Control Systems and Detention Locking Control System – An access control system utilizing electronic entry devices (card readers, keypads, vehicle tag readers, etc.) will be provided for controlled entry into restricted areas in the facility and onto the site. Security levels will be assigned to all staff that will determine access by time, date, and secured opening location. Controlled ingress will be deployed for secured parking, and building perimeter and Owner-defined restricted areas inside the facility. All transaction data of authorized and unauthorized movement within the facility will be recorded and available for record output. The access control system will be interfaced
New DeKalb Police Facility

with the Closed Circuit Television (CCTV) system to provide automatic camera call-up and video recording of defined events (alarm, unsecured door status, activation of entry device, etc.). In the Detention Area (Booking/Processing/Holding) of the facility, a programmable logic control (PLC) based locking control system and a security intercommunications system will be provided to create a higher degree of security controls. The system utilizes password protected graphical user interfaces (GUI) for controlling prisoner and employee traffic throughout the secure perimeter.

Intercom – A microprocessor based intercom system will be used to allow communication between individuals entering and exiting the secure area and the operator controlling the door control system. This system is integral to the door control system and in particular the GUI. The GUI will be used for tracking and acknowledgement of incoming calls and outgoing calls. Master stations will be adjacent to the GUI.

Closed Circuit Television (CCTV) System – A CCTV system will be designed to provide visual surveillance of secured areas and video capture of events. The fixed cameras will be high-resolution color housed in a low-profile enclosure. Pan/Tilt/Zoom cameras will utilize a small sealed dome enclosure. The video matrix switch will allow real-time viewing of all cameras at multiple locations. Camera video information will be captured and archived by Digital Video Recording (DVR) technology and utilize DVD/CD for long-term storage. The CCTV system will be interfaced to the Access Control system as described above. This will include the audio and video recording capability throughout the facility and will include all interview room settings.

Interview Monitoring and Recording System – Covert cameras and microphones will be used in all interview spaces allowing for remote visual and audible monitoring of interviews. A central monitoring console will be provided for real-time monitoring, recording and playback via a manual video switcher and audio mixer configuration. Camera and microphone outputs will be directed to video cassette recorders for archival recordings of interviews.

The Scope of Work includes technical specification writing, drawing development, review of proposals and shop submittals, and interim and final inspections.

12.1.2.3 Audio/Visual System Planning and Design

The Architect shall provide Audio/Visual System planning and design for the project. The Audio/Visual scope of work shall include the following: sound reinforcement, multimedia presentation display, integrated A/V control, cable television distribution, and video-conferencing. This Scope of Work includes technical specification writing, CAD drawing development, review of proposals and shop drawing submittals, and interim and final inspections and review of industry standard warranties. Systems include video and audio equipment and connections for rooms with high A/V demand including Patrol Briefing, Community Room, Investigations, Major Case Room, Emergency Operations Center, and Public Lobbies.

12.1.3 Furniture / Signage

The Architect shall develop Furniture Floor Plans for the new building based on work sessions with City Representatives. The Architect shall make furniture selections including materials, colors and finishes. The Architect shall prepare Bid Documents for use in obtaining cost proposal for furniture for the project. The Architect shall review shop drawings / submittals, coordinate deliveries for installation, observe furniture installation, prepare a Final Punchlist, and secure all specified warranties. The Scope excludes inventory, field verification and planning for reuse / relocation of existing furniture and equipment. Meetings for the furniture shall be limited to the following:

SD Phase: (2) meetings with client to discuss furniture layouts (end of phase)
New DeKalb Police Facility

1- Introduction, input furniture layouts & verification of their needs
2- Verify furniture layouts

DD Phase: (1) meeting to coordinate electrical locations w/ furniture.
   1- Kick-off meeting to get feel for building, etc. Room-by-room finish needs
   2- Initial samples and proposed schemes
   3- Final carpet decision and flooring choices
   4- Paint & wall finish selections and locations
   5- Millwork finishes, surfaces, ceilings
   6- Additional coordination meeting (if needed)
   7- Coordinate electrical locations in furniture/building

CD Phase: (approx. 8-10 meetings with client to discuss furniture and make decisions)
   1- Begin Furniture Discussions- Layout of furniture, office needs, budget, etc.
   2- Talk about state contracts vs. bidding, show cut sheets.
   2- Visit the Merchandise Mart (1 day only, from 9am-3pm approx.)
   3- Merchandise Mart-review meeting
   4- Decisions for systems on the majority of furniture.
   5- Budget meeting – estimate review, value engineering options, preferences/options.
   6- Meeting to review task chair samples/preferences, loose ends on furniture choice.
   7- Begin fabric discussions: all finishes and fabrics for each item
   8- Additional meeting to wrap up furniture items (if needed)
   9- Storage requirements, shelving, etc.

Architect shall prepare Design and Bidding Documents for interior and exterior building signage, review submittals, and prepare a Final Punchlist for typical way-finding and code-required signage (panel-type and post and panel). The scope excludes electronic signage or sophisticated messaging centers. The anticipated Furniture Budget is $480,000 and the anticipated Signage budget is $40,000.

12.1.4 Firing Range

Provide engineering services for the design of an indoor firing range including, controls, acoustics, configuration, targeting, bullet trap, HVAC integration, support spaces//functions for the range and finishes.

12.1.5 Record Drawings

The CMC shall be responsible for providing a final field As-Built Record Drawings. Architect shall provide one copy of the Bid Documents to the Owner. The drawings will be a useful tool for building operation and maintenance and any future building or system modifications.

12.2 ADDITIONAL SERVICES

12.2.1 Landscape Architecture

The Architect shall provide Landscape Architecture Services for landscape construction and planting materials. These services will include the development of the site for the plantings, pedestrian circulation, handicap access, public and staff entry plazas / courtyards, hardscape elements, landscape grading, details and technical specifications. One (1) colored site plan will be provided at the end of Schematic Design and one (1) at the end of Design Development. This Scope of Work is to be
New DeKalb Police Facility

provided for the proposed, approximately 3.0 acre property on West Lincoln Highway. Compensation for this work shall be provided as part of Basic Services.

12.2.2  LEED Certification

Architect shall provide additional research, design, study, life cycle costing, and evaluation of design options for the architecture, lighting, and heating and cooling systems to provide enhanced energy efficiency (beyond customary industry standards) in the new building and/or design to prescribed LEED certification levels as mandated by the Owner (minimum of LEED Silver Certified). The project will be designed to be compliant with current energy conservation and mechanical/electrical codes. This will afford a few of the LEED points, but will not result in reaching LEED certified design level without additional points being acquired in the non-energy categories. The design of the project will incorporate credits from all categories of the LEED rating system. LEED efforts will include researching and developing strategies; computerized energy modeling; documentation for the LEED submittal; and observation during building construction.

Compensation shall be on an hourly basis in accordance with Architect’s Standard Hourly Rates, not to exceed $110,000.00 and includes registration with the USGBC. The LEED objectives for the project shall be finalized within thirty (30) days of the Project Kick-Off Meeting, upon which time a more defined LEED scope can be implemented with the appropriate compensation.

12.2.3  Building Commissioning

The Architect shall provide services to monitor installation, start-up, and initial operation of the heating, ventilating, and air conditioning systems in the new building. This work is intended to align design intent and system operation and performance. Additionally, the Architect shall work with the City’s building operation and maintenance personnel to verify that training and operation and maintenance manuals are delivered and clearly understood.

The LEED and City objectives for Commissioning will be determined at the end of the Design Development phase, upon which a more defined Commissioning scope can be implemented with appropriate compensation.

12.2.4  Eco-Charrette

The Architect shall conduct a one-day workshop on environmental/sustainable design with the owner including architects, engineers and an environmental consultant. The workshop will identify sustainable design strategies and systems, define owner goals and expectations regarding sustainable building design, and review the potential benefits of Green Building Design including costs and return on investment. In addition, LEED certification challenges and approaches will be reviewed.

Compensation shall be the Stipulated Sum of $10,000.

12.2.5  Changes subsequent to thirty (30) days after Project Kick-Off Meeting

It is the intent of this agreement that the program and scope for all aspects of the Project, including, options, criteria, configurations, locations, internal functions and space allowances, and final determination of square footages be finalized within thirty (30) days of the Project Kick-Off Meeting.

Accordingly, services necessitated by a material change in the Project including, but not limited to, size, quality, complexity, the Owner’s schedule or budget for Cost of the Work, or procurement or delivery method following thirty days after the Project Kick-Off Meeting shall be provided as an Additional Services and compensated in accordance with Architect’s Standard Hourly rates, or as negotiated.
12.2.6 CMC Qualification Review and Selection Assistance

Architect shall assist in qualification and selection of the CMC. Architect will assist the Owner in developing a Request for Qualifications, reviewing applicants qualifications, and facilitate CMC interviews. Compensation for these services shall be the Stipulated Sum of $7,500.

12.2.7 Intersection Design Study

Provide engineering service for an Intersection Design Study and prepare construction drawings and specifications at the intersection of Carroll Avenue and West Lincoln Highway (IL 38) per the attached proposal from Baxter Woodman Consulting Engineers. Compensation for services shall be pursuant to the attached proposal from Baxter Woodman Consulting Engineers for the Stipulated Sum of $52,920 ($49,000 * 1.08).

12.3 ADMINISTRATION OF THE CONSTRUCTION CONTRACT

12.3.1 Except as provided in 3.6.6.4, the Architect’s responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work established in the Contract for Construction between the Owner and CMC.

12.4 NOT USED

12.5 LIMITED LIABILITY OF A CORPORATION

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

12.6 CONTRACTOR’S OBLIGATION TO INSURE FOR BODILY INJURY CLAIMS

12.6.1 Owner will require the CMC responsible for construction to purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death caused by any negligent act or omission of the CMC, Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable. Such insurance shall state that, “The coverage afforded the additional insureds shall be primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the contractor. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the company’s liability under this insurance policy shall not be reduced by the existence of such other insurance.”

12.7 RESPONSIBILITY FOR CODE COMPLIANCE

12.7.1 The Architect shall conform the Drawings and Specifications with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including but not limited to all zoning, building, occupancy, environmental and land use laws, requirements, regulations and ordinances relating to the construction, use and occupancy of the Project (collectively "Governmental Requirements") existing on the date of this Agreement. However, Owner recognizes that interpretations by governmental officials ("Code Authority") are often subject to change even after issuance of a building permit. If after award of the building permit, modifications to the Drawings or Specifications are required because of an interpretation by the Code Authority which had not been previously given, or which if given, was different than a prior interpretation of the Code Authority,
New DeKalb Police Facility

Architect shall make the required modifications, but the cost of such modifications shall be considered a Contingent Additional Service. Nothing contained herein shall relieve the Architect of its obligations to modify at its own expense Plans and Specifications where the Architect has negligently failed to prepare them in compliance with the applicable Government Requirements.

12.8 STANDARD OF CARE/DISCLAIMER OF WARRANTIES

12.8.1 Nothing contained in this Agreement shall require the Architect to exercise professional skill and judgment greater than that which can be reasonably expected from other architects performing similar services to those required hereunder. Architect makes no other warranties, express or implied. This limitation shall not be modified by any certification or representation made by Architect as an accommodation upon request of Owner. Architect shall not be responsible for any failure to follow or apply any knowledge or techniques which were not generally known, acknowledged or accepted as of the time during which Architect is performing his services under this Agreement.

12.8.2 If due to Architect’s breach of the standard of care, any required item or component of the Project is omitted from the Architect’s Construction Documents, Architect shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the Project or otherwise adds value or betterment to the Project. In no event will Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement to the Project.

12.9 FORCE MAJEURE

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

12.10 INDEMNITY FROM CONTRACTOR REQUIRED IN CONSTRUCTION CONTRACT

12.10.1 Architect will cause the following clause to be inserted in the construction contract(s) and Owner shall not permit it to be modified or deleted:

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

12.10.3 In any and all claims against the Owner or Architect or any of their agents or employees and consultants by any employee of the CMC, Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CMC, Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.
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12.10.4 "Claims, damages, losses and expenses" as those words are used in this Agreement shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by CMC, Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by the Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus costs of travel, long distance telephone and reproduction of documents."

12.10.5 Only to the extent necessary to prevent this provision from being void under governing law, this indemnity agreement shall not require the CMC to indemnify the Owner, Architect, their consultants, agents or employees against their own negligence.

12.11 NOT USED

12.12 NOT USED

12.13 NOT USED

12.14 CREDIT AND PUBLICITY

12.14.1 Owner agrees, and will obtain a similar agreement from the CMC, to the effect that the Architect will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Owner will permit Architect to photograph and make other reasonable use of the Project for promotional purposes.

12.15 AMERICANS WITH DISABILITIES ACT

12.15.1 Architect shall conform its Drawings and Specifications to the requirements of the Americans With Disabilities Act Accessibility Guidelines ("ADAAG"), but Owner shall be solely responsible for compliance with the remaining provisions of the Americans With Disabilities Act ("ADA"). ADA by governmental officials and/or courts of law may vary or change. Should such variance or change require Architect to make the required modifications, such modifications shall be considered a Contingent Additional Service.

12.16 ELECTRONIC MEDIA

12.16.1 If Architect is required to deliver any services required hereunder in the form of electronic encoded media, the printed representation of such media furnished by the Architect shall be the official record of Architect's services. Owner shall have a right to rely only on such printed representation in connection with any subsequent modification of such electronic media and agrees to indemnify, defend and hold Architect harmless from all cost and expense, including attorneys' fees from claims which arise out of modification of such electronic media or printed representation by or on behalf of Owner without Architect's consent.

12.17 NOT USED

12.18 NOT USED

12.19 OWNER’S CONSULTANT’S TRANSMITTAL OF INFORMATION

12.19.1 Architect shall coordinate the transmittal of information or documents among or between various Owner’s Consultants but shall not analyze or review the information or documents unless specifically necessary for performance of Architect’s services. Owner and Architect agree that Architect shall have
New DeKalb Police Facility

no responsibility or liability to Owner for any errors or omissions in Owner’s Consultant’s services even if documents or information arising from such services are transmitted through Architect for use by others, or if Architect relies on such documents or information to provide its services, unless Architect has actual knowledge of any error or omission.

12.20  FAST-TRACK

12.20.1 In order to minimize construction problems and change orders, Architect’s standard practice requires the completion of detailed working drawings prior to bidding and entering into firm construction contracts. However, Owner may choose to accelerate the completion of the work so that it is completed in a shorter time period than would normally be required. Owner understands that if construction or furnishings contracts are let prior to the completion of final working drawings and specifications there may be increases in costs and change orders caused by the inability to coordinate Construction Documents, and the inability to make various decisions until after early bids are received and some construction undertaken. The Architect has no responsibility for these conditions. A maximum of two (2) construction packages shall be provided as part of Basic Services.
STANDARD HOURLY BILLING RATE SCHEDULE

Dewberry
Engineering/Planning/Landscape/Architecture/Surveying Services/MC Services

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© Dewberry
Revised September 1, 2010
Subject to revision

Schedule STD
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into this 12th day of January, 2015 by and between the City of DeKalb (hereafter "City"), Dewberry Architects, Inc., f/k/a PSA-Dewberry, Inc. (hereafter "Dewberry"), and Irving Construction Company, Inc. (hereafter "Irving"), who are referred to collectively in this Agreement as the "Parties."

RECITALS

WHEREAS, City is the owner of improved real estate located at 700 West Lincoln Highway, DeKalb, Illinois (the "Property").

WHEREAS, on December 6, 2011, City entered into a contract with Dewberry to provide design and construction administration phase services ("Dewberry's Services") for the construction of a new police facility located on the Property (the "Project").

WHEREAS, on or about April 1, 2012, City entered into a contract with Irving to provide general contracting services for the construction of the Project ("Irving's Services").

WHEREAS, the Project was substantially complete on October 24, 2013.

WHEREAS, following substantial completion, City determined the north side of the facility lacked sufficient heat in extreme weather conditions. City notified Dewberry and Irving of this alleged insufficiency, claiming errors and/or omissions in the HVAC design and construction caused the condition, the correction of which through the installation of additional fin tube and electric heaters will result in the incursion of added expense ("Claims").

WHEREAS, the Parties acknowledge that repairs described and reflected in Irving's Change Order Request (RFI # 044 Rev.) dated August 26, 2014 ("Change Order Request") will be made to the Property by Irving to correct this condition, the cost of which shall be paid by
City, Dewberry and Irving as described in Paragraph 2 below. The Change Order Request is incorporated herein by this reference.

WHEREAS, the Parties wish to enter into this Settlement Agreement and Mutual Release for the purpose of fully, finally, and completely resolving, settling and compromising the Claims related to the alleged heat insufficiency and associated repair costs (as more fully defined in the above recital) arising from Dewberry’s Services and Irving’s Services on the Project per their respective contracts.

WHEREAS, on October 13, 2014, City approved and authorized this settlement for the Claims concerning insufficient heat and the repair costs to correct that condition.

NOW, THEREFORE, in consideration of the above Recitals, which the Parties stipulate are factually true and correct, and in consideration of the performance of their mutual obligations, undertakings, and covenants in this Agreement, which consideration the Parties stipulate is legally sufficient, the Parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated into this Agreement and shall be deemed an integral part of it.

2. **Agreed Terms of Settlement.** Concurrent with the execution of this Agreement, Dewberry shall cause to be paid by check to the City of DeKalb the settlement amount of Eight Thousand Three Hundred Forty Seven Dollars ($8,347.00), representing the agreed settlement amount Dewberry shall contribute towards the Change Order Request for the repairs Irving shall provide. The City shall contribute Eight Thousand Three Hundred Forty Seven Dollars ($8,347.00) towards the Change Order Request for the repairs Irving shall provide. Irving shall absorb the amount of Six Thousand Four Hundred Fifty Four Dollars ($6,454.00), which
represents the remaining balance of the Change Order Request for the repairs Irving shall provide. The total settlement amount (the "Settlement Amount") of Twenty-Three Thousand One Hundred Forty Eight Dollars ($23,148.00) is the full amount of the Change Order Request.

3. **Satisfaction of Claims.** Dewberry and Irving shall each be deemed to have completely and fully satisfied the Claims that City had, has or may subsequently have against each of them related to the alleged heat insufficiency and associated repair costs (as more fully defined in the above recital) arising from Dewberry’s Services and Irving’s Services on the Project per their respective contracts, but without prejudice to any claims for breach of this Agreement, upon: (a) tender of Dewberry’s payment to City of its settlement amount; (b) tender of their executed counterparts of this Agreement to all Parties; and (c) Irving’s completion of the repairs identified in the Change Order Request.

4. **Representations and Warranties.** The Parties represent and warrant to each other as follows:

(a) Each party to this Agreement has read it in its entirety, understands they have the option to obtain advice of counsel with respect thereto, understands all terms of this Agreement and voluntarily accepts such terms for the purpose of making a full and final compromise, adjustment, and settlement of the matters addressed herein;

(b) They each have full authority to enter into this Agreement and to execute, deliver and perform this Agreement;

(c) The Parties have not and shall not grant, assign, sell, transfer, dispose of, or convey, and have not committed to grant, assign, sell, transfer, dispose of, or convey any rights, claims, causes of action, demands, liabilities, securities, obligations, or debts covered by this Agreement;

(d) The Parties have not made, entered into or committed to enter into any agreements or obligations inconsistent with this Agreement and agree they shall not do so;
(c) The Parties are not aware of any claims by any third party that would interfere in any way with the performance of any obligations of these Parties as called for by this Agreement;

(f) Nothing in this Agreement shall constitute or be construed as an admission or concession of liability by any Party, which liability is denied; and

(g) This Agreement shall not be admissible in evidence except to enforce its terms.

5. **Release.** City, for itself and its respective administrators, agents, assigns, attorneys, beneficiaries, board members, directors, divisions, employees, insurers, members, officials, officers, principals, privies, representatives, servants, successors, and trustees, past and present, does forever release, remise, acquit and discharge Dewberry and Irving and their respective administrators, agents, assigns, attorneys, beneficiaries, board members, companies, corporations, directors, divisions, employees, insurers, limited partners, members, officials, officers, owners, parents, partners, predecessors, principals, privies, representatives, servants, shareholders, subrogees, subsidiaries, successors, and trustees, past and present, from any and all debts, damages, demands, claims, charges, costs, expenses, liabilities, losses, obligations, suits, judgments, dues, sums of money, fees, and causes of action of every kind, whether at law or in equity, including tort, contract, indemnity, warranty, subrogation, contribution, statutory and/or regulatory-based claims, or otherwise, including all claims for legal fees, expenses and costs, that it asserted or may have asserted against each of them arising from or related to the alleged heat insufficiency and associated repair costs (as more fully defined in the above recital) arising from Dewberry’s Services and Irving’s Services on the Project per their respective contracts.

6. **Covenant Not To Sue.** The Parties each covenant and agree that they will never sue or institute any proceedings in any court or other forum for dispute resolution against any other Party to charge any other Party with any liability for or to recover any compensation for
damages sustained based on or on account of any claims, controversies, actions, causes of action, demands, debts, contracts, agreements, promises, representations, torts, damages, costs, attorneys fees, expenses, monies due on account, obligations, judgments or liabilities of any nature whatsoever covered by this Agreement. The Parties agree that if one of them commences, joins in, or in any manner seeks relief through any suit or claim against any other party or any third-party arising out of, based upon, or relating to any of the matters covered by this Agreement, or in any manner asserts any of the matters covered by this Agreement, that the party bringing such action shall pay to the other party(ies), in addition to all damages (including indemnity) caused thereby, all reasonable attorneys fees, costs and expenses incurred in defending or responding to or otherwise seeking relief from said suit or claims.

7. **Further Assurances.** The Parties agree to cooperate with each other and to deliver or cause to be delivered any services, instruments or other documents reasonably requested to consummate the transaction provided for in this Agreement and to effectuate its provisions.

8. **Final Agreement.** This Agreement constitutes the entire integrated Agreement of the Parties relating to its subject matter. It supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to its subject matter. The Parties have not relied upon any promises, representations, warranties, agreements, covenants, or undertakings not otherwise expressly set forth in this Agreement.

9. **Amendment.** No amendment or modification of any provision of this Agreement shall be effective unless it is in writing and signed by all Parties hereto.
10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois as if jointly written by the Parties. The Parties further acknowledge the inapplicability of the law of any other jurisdiction.

11. **Jurisdiction Over Parties and Subject Matter: Forum Selection.** The Parties agree that any lawsuit to adjudicate any Claim, dispute, or controversy which arises out of, relates to, or is incidental to their rights and obligations under this Agreement shall be filed in Circuit Court of DeKalb County, Illinois, and that the Parties agree to consent to and waive any objections to personal jurisdiction, venue, or convenience in the Circuit Court of DeKalb County, Illinois. In any such enforcement proceeding, said court may direct any party to execute any stipulation, instrument or other document, and to take all such other action as may be reasonably requested to consummate the transactions provided for in this Agreement and to effectuate its provisions and intent.

12. **Remedies Upon Breach.** Upon breach of this Agreement, in the event that an enforcing party shall seek enforcement of the terms of this Agreement, the offending party shall reimburse the enforcing party for all costs and expenses reasonably incurred in securing said enforcement including, but not limited to, reasonable attorneys fees.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Executed facsimile and electronic copies shall have the same force and effect as the original.

14. **Expenses.** Each Party shall bear its own expenses, costs, and attorneys fees incurred in connection with the preparation of this Agreement, and in the consummation and preparation for the transactions contemplated by this Agreement.
15. **Assignment.** Neither this Agreement nor any right created by this Agreement shall be assigned by any party without the prior written consent of all Parties hereto.

16. **Partial Invalidity.** Whenever possible, each provision of this Agreement shall be interpreted so as to be effective and valid under applicable law. If any one or more of the provisions of this Agreement is held invalid, illegal, or unenforceable in any respect for any reason, such provision shall be ineffective only to the extent of such invalidity, illegality, or unenforceability, and the remainder of the Agreement shall not be held invalid unless such a construction would be unreasonable.

17. **Non-Waiver.** No delay or omission by any Party to exercise any right or remedy upon breach of this Agreement shall be construed as a waiver of such right or remedy.

18. **Miscellaneous.**

(a) All representations, promises, covenants, agreements, stipulations, undertakings, and obligations provided for in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated by it.

(b) All headings and defined terms are for informational purposes only and shall not be construed in any manner to modify or expand the meaning of the text contained herein.

[Remainder of page intentionally left blank.]
This Settlement Agreement, consisting of eight (8) pages, the signature page included, was executed and effective on the date first written above.

City of DeKalb
By: [Signature]
Its: ______________________

Dewberry Architects, Inc., f/k/a PSA-Dewberry, Inc.
By: ______________________
Its: ______________________

Irving Construction Company, Inc.
By: ______________________
Its: ______________________
Date: 1/12/14

☐ Agreement  ☐ Lease  ☐ Other: ____________________________

Between the City and Dewberry Architects

Brief Description:

This is the settlement agreement for the heat at the police station.

Terms (if applicable, include length of term and any monetary amounts involved):

Dewberry is paying 1/3 of costs based on this agreement.

Has the document been reviewed by the City Attorney?
☑ Yes – City Attorney’s Initials __________________________

☐ No – If the answer is no, contact the City Attorney for review prior to submitting the document for the City Manager’s signature.

Name of Person Completing this Form: T. J. Moore
Moore, Thomas

Anne Marie,

I've reviewed this and am good with it. It falls within your authority and/or within the Mayor's authority under the action taken on 10/13. The settlement is limited just to inadequate heat claims.

TJ—the heaters are installed, operational and satisfactory, correct?

Yours truly,

Dean M. Frieders