

DRAFT AIA[®] Document C141[™] - 1997

Standard Form of Agreement Between Architect and Consultant

AGREEMENT made as of the **Twelfth** day of **May** in the year **Two Thousand and Four**
(In words, indicate day, month and year)

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

Heitzman Architects, Sole Proprietorship
111 North Marion Street
Oak Park, IL 60301
Telephone Number: (708) 848-8844
Fax Number: (708) 848-8845

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

Architectural Consulting Engineers, Sole Proprietorship
837 North Hayes
Oak Park, IL 60302
Telephone Number: (708) 524-0272
Fax Number: (708) 524-5114

Consultant's Discipline or Services:

MEP

Consultant's Designated Representative is:
(Name, address and other information)

Mark Nussbaum
837 North Hayes
Oak Park, IL 60302
Mobile Number: (708) 269-2228
marknussbaum@aceng.biz

The Architect has made an agreement, hereinafter known as the Prime Agreement, with
the Architect's client identified as the Owner:
(Name, address and other information)

The Chicago Society of Alpha Delta Phi, General Corporation
5747 South University Avenue
Chicago, IL 60637
Telephone Number: (312) 996-4487
Fax Number: (312) 996-6834

Dated: **September 19, 2003**
(In words, indicate month, day and year of the Owner-Architect Agreement)

For the following Project:
(Include detailed description of Project, location, address and scope.)



ADDITIONS AND DELETIONS:

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

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



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The Architect and the Consultant agree as follows.



ARTICLE 1 DESCRIPTION OF SCOPE

The Consultant shall provide the Architect with the following professional services in the same manner and to the same extent as the Architect is bound by the Prime Agreement to provide such services for the Owner.
(Describe the type of consulting services applicable to the professional discipline.)

Mechanical, Electrical, Plumbing and Fire Protection Engineering services

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 A copy of the Architect's agreement with the Owner, known as the Prime Agreement (from which compensation amounts may be deleted), is attached as Exhibit A and is made a part of this Agreement.

§ 2.2 The part of the Project for which the Consultant is to provide services is hereinafter called This Part of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other part of the Project.

§ 2.3 The Consultant is an independent contractor for This Part of the Project, responsible for methods and means used in performing the Consultant's services under this Agreement, and is not an employee, agent or partner of the Architect.

§ 2.4 The Architect shall be the general administrator of the professional services for the Project, and shall facilitate the exchange of information among the consultants retained by the Architect for the Project as necessary for the coordination of This Part of the Project. Except as authorized by the Architect, all communications between the Consultant and the Owner, Contractor or other consultants for the Project shall be forwarded through the Architect.

ARTICLE 3 CONSULTANT'S RESPONSIBILITIES

§ 3.1 GENERAL RESPONSIBILITIES

§ 3.1.1 The services performed by the Consultant, Consultant's employees and Consultant's subconsultants shall be as enumerated in Articles 4, 5 and 14.

§ 3.1.2 The Consultant shall designate a representative authorized to act on behalf of the Consultant with respect to This Part of the Project.

§ 3.1.3 The Consultant shall recommend to the Architect that appropriate investigations, surveys, tests, analyses and reports be obtained as necessary for the proper execution of the Consultant's services.

§ 3.1.4 The Consultant's services shall be coordinated with those of the Architect and other consultants for the Project in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's or other consultants' services.

§ 3.1.5 The Consultant shall provide copies of drawings, reports, specifications and other necessary information to the Architect and other consultants for coordination and review during the course of the Project. All aspects of the Work designed by the Consultant shall be coordinated by the Consultant, and the Consultant shall become familiar with the Work designed by the Architect and other consultants as necessary for the proper coordination of This Part of the Project.

§ 3.1.6 The Consultant shall cooperate with the Architect in determining the proper share of the budget for the Cost of the Work to be allocated to This Part of the Project.

§ 3.1.7 The Consultant shall not be responsible for the acts or omissions of the Architect, Architect's other consultants, Contractor, Subcontractors, their agents or employees, or other persons performing any of the Work.

§ 3.1.8 The Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner or Architect, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Consultant from establishing a claim or defense in an adjudicatory proceeding. The Consultant shall require of the Consultant's subconsultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner or Architect.

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

§ 3.1.10 The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Consultant shall submit for the Architect's approval a schedule for the performance of the Consultant's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner and Architect's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Architect shall not, except for reasonable cause, be exceeded by the Consultant or Architect. The Consultant shall not be responsible for delays beyond the Consultant's control.

§ 3.2 EVALUATION OF BUDGET AND COST OF WORK

§ 3.2.1 When the Project requirements have been sufficiently identified, the Consultant shall prepare and submit to the Architect a preliminary estimate of Cost of the Work for This Part of the Project. This estimate may be based on current area, volume or similar conceptual estimating techniques, as directed by the Architect. As the design process progresses through the end of the preparation of the Construction Documents, the Consultant shall update and refine the preliminary estimate of the Cost of the Work. The Consultant shall advise the Architect of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Consultant's estimate of the Cost of the Work for this Part of the Project would cause the Owner's budget to be exceeded, the Consultant shall make appropriate recommendations to the Architect to adjust the Project's size, quality or budget.

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

§ 3.2.3 In preparing estimates for the Cost of the Work for This Part of the Project, the Consultant, after conferring with the Architect, shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents with respect to This Part of the Project; to make reasonable adjustments in the scope of This Part of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work for This Part of the Project. If an increase in the Contract Sum occurring after the execution of the Contract between the Owner and Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

§ 3.2.4 If bidding or negotiation for This Part of the Project has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work for This Part of the Project shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 3.2.5 If the budget for the Cost of the Work for This Part of the Project is exceeded by the lowest bona fide bid or negotiated proposal, the Architect shall:

- .1 give written approval of an increase in the budget;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 10.6; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

If the Architect chooses to proceed under Section 3.2.5.4, the Consultant, without additional compensation, shall modify the documents for which the Consultant is responsible, so that the Consultant may bear a reasonable portion of the burden of reducing the Cost of the Work for This Part of the Project as necessary to comply with the budget for the Cost of the Work. The modification of such documents without cost to the Architect shall be the limit of the

Consultant's responsibility under this Section 3.2. The Consultant shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

ARTICLE 4 SCOPE OF CONSULTANT'S SERVICES

§ 4.1 SCHEMATIC DESIGN

§ 4.1.1 The Consultant shall ascertain the requirements for This Part of the Project and shall confirm such requirements to the Architect.

§ 4.1.2 The Consultant shall review alternative systems with the Architect, attend necessary conferences, prepare necessary analyses, drawings and other documents, be available for general consultation, and make recommendations regarding basic systems for This Part of the Project. When necessary, the Consultant shall consult with public agencies and other organizations concerning utility services and requirements.

§ 4.2 DESIGN DEVELOPMENT

When authorized by the Architect, the Consultant shall prepare Design Development Documents from the Schematic Design studies approved by the Owner and confirmed by the Architect. The Design Development Documents shall consist of drawings and other documents to fix and describe This Part of the Project, including materials, equipment, component systems and types of construction or installation as may be appropriate, all of which are to be approved by the Owner and Architect.

§ 4.3 CONSTRUCTION DOCUMENTS

§ 4.3.1 When authorized by the Architect, the Consultant shall prepare, from the Design Development Documents approved by the Owner and confirmed by the Architect, Drawings and Specifications setting forth in detail the requirements for the construction of This Part of the Project, all of which are to be approved by the Owner and Architect. The Consultant shall prepare the Drawings and Specifications in such format as the Architect may reasonably require.

§ 4.3.2 The Consultant shall assist the Architect as necessary in connection with the Owner's responsibility for filing the documents concerning This Part of the Project required for the approval of governmental authorities having jurisdiction over the Project.

§ 4.4 BIDDING OR NEGOTIATION

The Consultant shall assist the Architect and Owner in obtaining and evaluating bids or negotiated proposals, and assist in awarding and preparing contracts for construction or installation.

§ 4.5 CONTRACT ADMINISTRATION SERVICES

§ 4.5.1 The Consultant's responsibility to provide the Contract Administration services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Consultant shall be entitled to a Change in Services in accordance with Section 5.1 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

§ 4.5.2 The Consultant shall assist the Architect in the administration of the Contract between Owner and Contractor with respect to This Part of the Project as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, identified in the Prime Agreement, unless otherwise provided in this Agreement.

§ 4.5.3 The Consultant shall visit the site at intervals appropriate to the stage of the Contractor's operations for This Part of the Project, or as otherwise agreed with the Architect in writing, (1) to become generally familiar with and to keep the Architect informed about the progress and quality of the portion of the Work completed for This Part of the Project, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work for This Part of the Project. The Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work for This Part of the Project, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.5.4 The Consultant shall report to the Architect known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Consultant shall be responsible for the Consultant's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.5.5 The Consultant shall at all times have access to the Work for This Part of the Project, wherever it is in preparation or progress

§ 4.5.6 Based on the Consultant's evaluations of the Work and of the Contractor's Applications for Payment, the Consultant shall assist the Architect in determining the amounts due the Contractor for This Part of the Project and shall certify such amounts to the Architect in writing.

§ 4.5.7 Certification for payment by the Consultant to the Architect of the amounts due the Contractor shall constitute a representation to the Architect, based on the Consultant's evaluation of the Work as provided in Section 4.5.3 and on the data comprising the Contractor's Application for Payment, that the Work for This Part of the Project has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, 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 Consultant.

§ 4.5.8 Upon written request of the Architect, the Consultant shall furnish to the Architect with reasonable promptness, in writing or in the form of drawings, interpretations of the Contract Documents prepared by the Consultant, if, in the opinion of the Architect, such interpretations are necessary for the proper execution or progress of the Work.

§ 4.5.9 The Consultant shall within a reasonable time render written recommendations on claims, disputes and other matters in question between the Owner and Contractor relating to the execution or progress of This Part of the Project as provided by the Contract Documents.

§ 4.5.10 The Consultant shall assist the Architect in determining whether the Architect shall reject Work for This Part of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required.

§ 4.5.11 The Consultant shall review and approve or take other appropriate action upon the Contractor's submittals pertaining to This Part of the Project, 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. Following such appropriate action, the Consultant shall forward the Contractor's submittals to the Architect for final disposition. The Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor, as required for this Part of the Project by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of any construction means, methods, techniques, sequences or procedures. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.5.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Consultant shall be entitled to rely upon the

adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 4.5.13 The Consultant shall assist the Architect in preparing Change Orders and Construction Change Directives for This Part of the Project for the Owner's approval and execution in accordance with the Contract Documents, and may recommend to the Architect minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 4.5.14 The Consultant shall assist the Architect in conducting inspections, with respect to This Part of the Project, to determine the date or dates of Substantial Completion and the date of final completion, shall review and approve, or take other appropriate action on, the Contractor's list of items to be completed or corrected, and shall forward the list to the Architect for final disposition. The Consultant shall assist the Architect in receiving from the Contractor and forwarding to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor with respect to This Part of the Project. If requested, the Consultant shall issue to the Architect a final certification in writing with respect to final payment for This Part of the Project.

ARTICLE 5 OTHER SERVICES

§ 5.1 CHANGE IN SERVICES

§ 5.1.1 Change in Services of the Consultant other than a change required to bring This Part of the Project within the Project budget for the Cost of the Work, including services required of subconsultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Consultant's control, or if the Consultant's services are affected as described in Section 5.1.2. In the absence of mutual agreement in writing, the Consultant shall notify the Architect prior to providing such services. If the Architect deems that all or a part of such Change in Services is not required, the Architect shall give prompt written notice to the Consultant, and the Consultant shall have no obligation to provide those services. Except for a change due to the fault of the Consultant, Change in Services of the Consultant shall entitle the Consultant to an adjustment in compensation pursuant to Section 13.2.2, and to any Reimbursable Expenses described in Section 12.6.

§ 5.1.2 If any of the following circumstances affect the Consultant's services for the Project, the Consultant shall be entitled to an appropriate adjustment in the Consultant's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 evaluation of the Owner's or Contractor's proposals, including the preparation or revision of Instruments of Service, and provision of other services in connection with Change Orders and Construction Change Directives;
- .6 providing consultation concerning replacement of Work resulting from fire or other causes during construction;
- .7 failure of performance on the part of the Owner, the Owner's consultants or contractors;
- .8 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;
- .9 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Consultant is party thereto;
- .10 evaluation of substitutions proposed by the Owner or the Contractor after the award of the Contract for Construction;
- .11 preparation of design and documentation for alternate bids or proposal requests proposed by the Owner;
- .12 change in the Preliminary Project information contained in the Agreement between Owner and Architect; or
- .13 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.

§ 5.2 PROJECT REPRESENTATION SERVICES

§ 5.2.1 If more extensive representation at the site than is described under Section 4.5.3 is required for This Part of the Project, the Consultant shall, if requested by the Architect, provide one or more Project Representatives to assist the Consultant in carrying out such additional on-site responsibilities.

§ 5.2.2 Project Representatives shall be selected, employed and directed by the Consultant, and the Consultant shall be compensated therefor as agreed by the Architect and Consultant. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in an exhibit to this Agreement.

§ 5.2.3 Through the presence at the site of such Project Representatives, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work for This Part of the Project, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Consultant as described elsewhere in this Agreement.

ARTICLE 6 ARCHITECT'S RESPONSIBILITIES

§ 6.1 The Architect shall provide available information in a timely manner regarding requirements for and limitations on This Part of the Project. The Architect shall furnish to the Consultant, within 21 days after receipt of a written request, information necessary and relevant for the Consultant to evaluate, give notice of or enforce lien rights.

§ 6.2 The Architect may designate a representative authorized to act on the Architect's behalf with respect to This Part of the Project. The Architect or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

§ 6.3 If the Consultant considers it necessary for This Part of the Project, the Architect shall request that the Owner furnish the services of other consultants when such services are reasonably required by the scope of the Project, including 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; 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 information on the survey shall be referenced to a Project benchmark.

§ 6.4 On the Consultant's request for This Part of the Project, the Architect shall furnish to the Consultant, in a timely manner, (1) detailed layouts showing the location of connections, and (2) tabulations giving sizes and loads of equipment designed, specified or furnished by others for incorporation into other parts of the Project.

§ 6.5 On the Consultant's request for This Part of the Project, the Architect shall request the Owner to furnish, in a timely manner, the services of geotechnical engineers. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

§ 6.6 On the Consultant's request for This Part of the Project, the Architect shall request the Owner to furnish structural, mechanical and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 6.7 The services, information, surveys and reports required by Sections 6.3 through 6.6 shall be furnished at no expense to the Consultant, who shall be entitled to rely upon the accuracy and completeness thereof. The Consultant shall provide prompt written notice to the Architect if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.

§ 6.8 The Architect shall provide prompt written notice to the Consultant if the Architect becomes aware of any fault or defect with respect to This Part of the Project including any errors, omissions or inconsistencies in the Consultant's Instruments of Service.

§ 6.9 The Architect shall confer with the Consultant before issuing interpretations or clarifications of documents prepared by the Consultant and shall request the recommendation of the Consultant before providing interpretations or clarifications of Shop Drawings, Product Data, Samples or other submissions of the Contractor, or upon Change Orders and Construction Change Directives affecting This Part of the Project.

§ 6.10 The Architect shall furnish to the Consultant a copy of the preliminary estimate or updated estimates of Cost of the Work as submitted to the Owner, bidding documents, bid tabulations, negotiated proposals and Contract Documents, including Change Orders and Construction Change Directives as issued, to the extent that they pertain to This Part of the Project.

§ 6.11 The Architect shall advise the Consultant of the identity of other consultants participating in the Project and the scope of their services.

§ 6.12 The Architect shall review the Consultant's work for compliance with the Owner's program and for overall coordination with the architectural and engineering requirements.

ARTICLE 7 COST OF THE WORK

§ 7.1 DEFINITION

§ 7.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect and the Architect's consultants. The Cost of the Work for This Part of the Project shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Consultant.

§ 7.1.2 The Cost of the Work or the Cost of the Work for This Part of the Project shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect or Consultant, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 7.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Architect as provided in Article 6 of this Agreement, or that are the responsibility of the Owner as defined in the Prime Agreement.

ARTICLE 8 INSTRUMENTS OF SERVICE

§ 8.1 Drawings, specifications, and other documents, including those in electronic form, prepared by the Consultant are Instruments of Service for use solely with respect to this Project. Unless otherwise provided, the Consultant shall be deemed the author and owner of the Consultant's Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 8.2 Upon execution of this Agreement, the Consultant grants to the Architect a nonexclusive license to reproduce the Consultant's Instruments of Service for purposes of designing, administering, using and maintaining the Project, provided that the Architect shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Such license shall permit the Architect to include the Consultant's Instruments of Service in a similar nonexclusive license to the Owner in the Prime Agreement, authorizing the Owner and the Owner's contractors and consultants to reproduce applicable portions of the Consultant's Instruments of Service solely for purposes of constructing, using and maintaining the Project. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Architect shall refrain from making further reproductions of the Consultant's Instruments of Service and shall return to the Consultant within seven days of termination all originals and reproductions in the Architect's possession or control. If and upon the date the Consultant is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license that permits the Architect, and the Owner through the Architect, to continue to use and to reproduce the Consultant's Instruments of Service and to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project. If the Architect is adjudged in default of the Prime Agreement, the Consultant, upon written request of the Owner, shall grant a nonexclusive

license to the Owner to reproduce the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project. In such event, the Owner shall not make changes in the Consultant's Instruments of Service without the Consultant's written permission.

§ 8.3 Except for the licenses granted in Section 8.2, no other license or right shall be deemed granted or implied under this Agreement. The Architect shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. Submission or distribution of Instruments of Services 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 Consultant. The Architect shall not use the Consultant's Instruments of Service for future additions or alterations to this Project or for other projects, unless the Architect obtains the prior written agreement of the Consultant. Any unauthorized use of the Instruments of Service shall be at the Architect's sole risk and without liability to the Consultant.

§ 8.4 Prior to the Consultant providing to the Architect any Instruments of Service in electronic form or the Architect providing to the Consultant any electronic data for incorporation into the Instruments of Service, the Architect and Consultant 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.

§ 8.5 The Architect and Consultant shall not make changes in each other's Instruments of Service without written permission of the other party.

§ 8.6 The Consultant shall maintain on file and make available to the Architect design calculations for This Part of the Project, and shall furnish copies thereof to the Architect on request.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 MEDIATION

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

§ 9.1.2 The Architect and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 9.1.3 The parties agree to split 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.

§ 9.2 ARBITRATION

§ 9.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 9.1.

§ 9.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 9.2.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

§ 9.2.4 An arbitration arising out of or related to this Agreement may be consolidated with an arbitration between the Architect and any other person or entity if such arbitration involves common issues of fact relating to the performance by the Consultant of the Consultant's obligations under this Agreement.

§ 9.2.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 9.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and Consultant waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 10.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 This Agreement may be terminated at such time as the Prime Agreement is terminated. The Architect shall promptly notify the Consultant of such termination.

§ 10.2 If the Architect fails to make payments to the Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Consultant's option, cause for suspension of performance of services under this Agreement. If the Consultant elects to suspend services, prior to suspension of services, the Consultant shall give seven days' written notice to the Architect. In the event of a suspension of services, the Consultant shall have no liability to the Architect for delay or damage caused the Architect because of such suspension of services. Before resuming services, the Consultant shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 10.3 If the Project is suspended by the Owner or the Architect for more than 30 consecutive days, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant shall be compensated for expenses incurred in the interruption and resumption of the Consultant's services. The Consultant's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 10.4 If the Project is suspended for more than 90 consecutive days by either party, the Consultant may terminate this Agreement by giving not less than seven days' written notice.

§ 10.5 This Agreement may be terminated by either party 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.

§ 10.6 This Agreement may be terminated by the Architect upon not less than seven days' written notice to the Consultant for the Architect's convenience and without cause.

§ 10.7 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 10.8.

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

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Article 14.

§ 11.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document

A201, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement.

§ 11.3 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 not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitation commence to run any later than the date when the services are substantially completed.

§ 11.4 To the extent damages are covered by property insurance during construction, the Architect and Consultant waive all rights against each other and against the Owner, contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement. The Consultant or the Architect, as appropriate, shall require of the Owner, contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 11.5 The Architect and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Architect nor Consultant shall assign this Agreement without the written consent of the other.

§ 11.6 This Agreement represents the entire and integrated agreement for This Part of the Project between the Architect and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Consultant.

§ 11.7 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 Architect or Consultant.

§ 11.8 Unless otherwise provided in this Agreement, the Architect and Consultant 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.

ARTICLE 12 PAYMENTS TO THE CONSULTANT

§ 12.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Consultant's statement of services. No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Consultant has been adjudged to be liable.

§ 12.2 The Architect shall disclose to the Consultant, prior to the execution of this Agreement, contingent or other special provisions relative to compensation that are included in the Architect's understanding with the Owner or in the Prime Agreement.

§ 12.3 The Consultant shall submit invoices for services and Reimbursable Expenses in accordance with the provisions of the Prime Agreement. The Architect shall review such invoices and, if they are considered incorrect or untimely, the Architect shall review the matter with the Consultant and confirm in writing to the Consultant, within ten days from receipt of the Consultant's billing, the Architect's understanding of the disposition of the issue.

§ 12.4 If and to the extent that the time initially established in Section 13.4.1 of this Agreement is exceeded or extended through no fault of the Consultant, compensation for services rendered during the additional period of time shall be computed in the manner set forth in Section 13.2.

§ 12.5 Payments to the Consultant shall be made promptly after the Architect is paid by the Owner under the Prime Agreement. The Architect shall exert reasonable and diligent efforts to collect prompt payment from the Owner. The Architect shall pay the Consultant in proportion to amounts received from the Owner which are attributable to the Consultant's services rendered.

§ 12.6 REIMBURSABLE EXPENSES

§ 12.6.1 Reimbursable Expenses are in addition to compensation for the Consultant's services and include expenses incurred by the Consultant and Consultant's employees and subconsultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner; and
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner or Architect in excess of that normally carried by the Consultant.

§ 12.6.2 Records of Reimbursable Expenses and expenses pertaining to a Change in Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Architect or the Architect's authorized representative at mutually convenient times.

§ 12.7 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Consultant's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions.

§ 12.8 INSURANCE

§ 12.8.1 If required by the Architect, the Consultant shall obtain insurance covering claims arising out of the performance of professional services under this Agreement and caused by errors, omissions or negligent acts for which the Consultant is liable. The Consultant shall maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of the applicable statutes of limitations. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force by the Consultant for a reasonable period after the date of Substantial Completion of the Project as agreed to by the Architect and Consultant.

§ 12.8.2 Unless otherwise agreed, the Architect and Consultant shall each provide insurance to protect themselves from claims under workers' compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

§ 12.8.3 The insurance required pursuant to Sections 12.8.1 and 12.8.2 shall be in not less than the minimum limits required by law or by Section 13.5.

§ 12.8.4 The Consultant shall furnish to the Architect certificates of insurance evidencing the insurance required by Sections 12.8.1 and 12.8.2, including appropriate evidence that each type of insurance includes appropriate coverages for this specific Project. Certificates shall contain provisions that at least 30 days' prior written notice will be given to the Architect in the event of cancellation, reduction in or nonrenewal of the insurance.

ARTICLE 13 BASIS OF COMPENSATION

The Architect shall compensate the Consultant as follows:

§ 13.1 COMPENSATION

For services, as described in Section 4.1 through Section 4.5.14 and other services included in Article 14 as part of those services, compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify services to which particular methods of compensation apply, if necessary.)

Service(s) to be compensated	Basis of compensation
	\$75.00 per hour

§ 13.2 COMPENSATION FOR OTHER SERVICES

§ 13.2.1 For Project representation services, as described in Section 5.2, compensation shall be computed as follows:

\$75.00 per hour

§ 13.2.2 For other services of the Consultant, as described in Article 5, other than Project representation described in Section 5.2, compensation shall be computed as follows:

(Insert basis of compensation, including rates or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services or changes in services to which particular methods of compensation apply, if necessary.)

Service(s) to be compensated	Basis of compensation
	\$75.00 per hour

§ 13.2.3 For other services of subconsultants for other than normal consulting services for This Part of the Project, as provided under Section 13.2.2 or identified in Article 5 as Other Services, a multiple of () times the amounts billed to the Consultant for such services.

(Identify specific types of consultants in Article 14, if required.)

§ 13.3 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 12.6, a multiple of () times the expenses incurred by the Consultant, the Consultant's employees and subconsultants directly related to the Project.

§ 13.4 ADDITIONAL PROVISIONS

The Architect and Consultant agree in accordance with the Terms and Conditions of this Agreement that:

§ 13.4.1 If services covered by this Agreement have not been completed within Twelve (12) months of the date hereof, through no fault of the Consultant for This Part of the Project, extension of the Consultant's services beyond that time shall be compensated on the basis of hourly rates and multiples as provided in Section 13.2.2.

§ 13.4.2 The rates and multiples set forth for services shall be annually adjusted in accordance with normal salary review practices of the Consultant.

§ 13.4.3 PAYMENT PROVISIONS

(Insert provisions as to conditions, contingencies, times, manner and other particulars concerning payments, including any provisions for the payment of interest.)

§ 13.5 INSURANCE COVERAGES

(After consultation with insurance counsel for the Architect and Consultant, insert the minimum limits of insurance required for each type of insurance required in Sections 12.8.1 and 12.8.2, and other coverages which may be necessary to protect them. If insurance required is in excess of what the Consultant normally carries, the Consultant will be reimbursed if the Architect is reimbursed by the Owner.)

Type of insurance	Minimum limit (\$ 0.00)
Professional Liability	\$1,000.00

ARTICLE 14 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify specific types of subconsultants, and identify modifications to the payment and compensation terms included in this Agreement.)



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

ARCHITECT *(Signature)*
Frank Heitzman, AIA, Owner

(Printed name and title)

CONSULTANT *(Signature)*
Mark Nussbaum, Owner

(Printed name and title)

