



**CITY OF ELKHORN  
COMMON COUNCIL MEETING AGENDA**

**February 17, 2020 ~ 5:30 p.m.**

**Council Chambers, City Hall, 9 S. Broad St., Elkhorn, Wisconsin**

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4) **Public Comment** *Although the public may speak on any item that is not included on this agenda as a "Public Hearing or Forum", the Council may not respond or discuss the issue brought forward at this time. In accordance with open meeting laws the Council must notice an item on the agenda to allow discussion on that matter. Your comments will be considered and may be placed on a future agenda for further discussion.*
- 5) **Council Minutes**
  - a) Council Meeting Minutes: February 3, 2020
- 6) **Bills Payable**
  - a) Consideration and recommendation to pay
- 7) **Report of City Officers**
  - a) Mayor
    - i) Library Board Appointment of Katie James
    - ii) Plan Commission Appointment of Rick Gleason
  - b) City Administrator
- 8) **Report on Liaison Committee Meetings**
  - a) Fire Advisory
  - b) Library
  - c) Recreation Advisory
  - d) Chamber
  - e) Fire/EMS Advisory Steering
- 9) **Unfinished Business**
  - a) Decision on option for Babe Mann Park
  - b) Kehoe-Henry & Associates Inc Contract – Babe Mann Park Shelter
  - c) Kapur & Associates – Survey for Babe Mann Park
  - d) Ordinance No. 20-01 To Amend Chapter 5.17 regarding Open Burning (Second Reading)
- 10) **New Business**
  - a) EEDA Grant Program Addition
  - b) Authorization to store Tank at former Public Works building
  - c) Lease of Ice Cream Machine for Sunset Park Pool
- 11) **Adjourn into Closed Session**
  - a) Pursuant to Wisconsin Statute 19.85(1)(g) "Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

- i) Claims Committee Recommendation on Claim filed
- ii) City vs. CMD Partners
- iii) New Beginnings Court filing

12) **Reconvene in Open Session** for possible action on Closed Session items

13) **Adjourn**

DATED at Elkhorn, Wisconsin, this 14<sup>th</sup> day of February 2020

Cairie L. Virrueta, City Clerk

Should you have any questions or comments regarding any items on this agenda, please contact the City Clerk's office at 723-2219. Upon reasonable notice to the City Clerk, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services.

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**CITY OF ELKHORN COMMON COUNCIL**  
**MEETING MINUTES**  
**February 3, 2020**  
**COUNCIL CHAMBERS, 9 S. BROAD ST., ELKHORN, WI 53121**

The Common Council meeting was called to order by Mayor Reynolds at 5:30 p.m. in the Council Chambers followed by the Pledge of Allegiance.

**ROLL CALL**

Present: Mayor Howie Reynolds, Aldermen Tim Shiroda, Frank Boggs, Karel Young, Tom Myrin, Ron Dunwiddie, Scott McClory

Others present: City Administrator James Heilman, Attorney John Murphy, City Clerk Cairie Virrueta, Police Chief Joel Christensen, DPW Manager Matthew Lindstrom, Fire Chief Rod Smith, Recreation Director Karl Sorvick, Library Director Lisa Selje, other interested persons

**PUBLIC COMMENT**

None.

**COUNCIL MINUTES**

City Clerk Virrueta said an error in the draft minutes regarding budgeted items needed to say “without” rather than “with” and it will be fixed. ***Motion (McClory/Dunwiddie) to approve the minutes of the January 20, 2020 Common Council meeting with correction. Voice vote, all approved, motion carried.***

**REPORT OF CITY OFFICERS**

**MAYOR’S REPORT**

No report.

**CITY ADMINISTRATOR’S REPORT**

Administrator Heilman said the Fire Department received four quotes for a new vehicle and they are going with the low bidder, Elkhorn Motors, and it is within the budgeted amount.

**COMMITTEE REPORTS**

**COMMITTEE OF THE WHOLE**

**Recommendation for Plan Commission to consider amending Zoning Code to allow Feather Signs**

Alderman McClory asked if there was a specific definition of what a feather sign was; yes there is as well as for other signs. ***Motion (Dunwiddie/Boggs) for the Plan Commission to consider amending the zoning code regarding feather signs. Voice vote, all approved, motion carried.***

**Recommendation to approve budget adjustment for Police Department Traffic Recorder System**

The Police Department received a grant of \$4,000 to cover the purchase of the recorder system and the City would need to pay the extra \$436. ***Motion (Dunwiddie/Young) to approve a budget adjustment of \$4,436 to purchase a traffic recorder system for the Police Department. Roll call vote: Shiroda, yes; Boggs, yes; Dunwiddie, yes; McClory, yes; Myrin, yes; Young, yes. Motion carried.***

**NEW BUSINESS**

**Creation of Opening/Closing Fee for Elkhorn Recreation Center**

Recreation Director Sorvick said this would make the rental system smoother. A person meets the renter 15 minutes ahead of the rental time, walks them through the building and opens it for them. The person then returns at the end of the rental time to walk through the building checking for cleaning and any damages and then locks up the building. The fee would be \$25. ***Motion (McClory/Boggs) to approve adding an opening and closing fee for Recreation Center rentals. Voice vote, all approved, motion carried.***

**Approval of Vandewalle and Associates for Comprehensive Outdoor Recreation Plan (CORP)**

Recreation Director Sorvick received quotes to update the City's CORP and he recommends Vandewalle and Associates for \$12,940. They come highly recommended. He said they provided the option to do an in-depth review of Tasch Park for \$2,940, which he recommended as the old Public Works building will be torn down expanding the park. ***Motion (Boggs/Shiroda) to approve Vandewalle and Associates for the City's CORP in an amount not to exceed \$16,000. Roll call vote: Shiroda, yes; Boggs, yes; Dunwiddie, yes; McClory, yes; Myrin, yes; Young, yes. Motion carried.***

**ADJOURN TO CLOSED SESSION**

***Motion (Dunwiddie/Boggs) to adjourn to closed session pursuant to Wisconsin Statue 19.85(1)(g) "Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved" regarding New Beginnings Court filing. Voice vote, all approved, motion carried.***  
Adjourned to closed session at 5:40 p.m.

Cairie L. Virrueta  
City Clerk

## **COMMON COUNCIL MEMO**

**Meeting Date: February 17, 2020**

**Agenda Item: Common Council Agenda**

**Report Prepared By: City Administrator**

Bill Henry, Kehoe-Henry & Associates, has submitted renderings of other area shelters as ideas for the Babe Mann Park shelter.

At this point the Council has 2 options that have been presented for consideration on a cost basis. The first option falls in line with the budgeted total of \$350,000 and the second option would be a slightly larger shelter with a cost of \$438,415. Either option will give us a larger shelter than we presently have and the much need restroom improvements will be accomplished. I would recommend that a combination of wood and masonry construction would probably give us a better looking and longer lasting shelter. The add-on to this shelter will probably be a future discussion item if it warrants consideration as a 4-season facility.

Kehoe-Henry has also submitted a contract for the Babe Mann project, as reviewed and approved by legal Counsel.

Kapur & Associates has submitted a proposal for surveying work at Babe Mann Park, which will cover the Shelter project and future anticipated projects at that Park.

The Elkhorn Economic Development Alliance (EEDA) would like to add a new twist to their grant program. They would like to see if they could work with building owners who have vacant facilities to work on offering new tenants a 50% reduction on rent for 6 months, as an example. Under this program the EEDA may put up \$250/month of grant money and the property owner would put up \$150/month, over a 6 month period to reduce rent expense to allure prospective tenants to sign a lease. I would suggest a minimum of a 12 month lease, with consideration for an 18 month lease. Of the \$50,000 the Council approved for these grants this add-on eligible grant expense will be a minimal expense. The maximum expense for rent reduction would be \$1,500 per vacant building. This program would be part of the \$50,000 already authorized, so there will not be any additional expense for the grant program.

The VFW is requesting that the City consider allowing them to store the tank they are getting from the Whitewater VFW, at our former Public Works building located off 1<sup>st</sup> Street. The tank needs to be removed from the Whitewater property by the end of March and they are not sure their cement pad in Veterans Park will be ready. They would not anticipate a long storage period.



25 NORTH WISCONSIN STREET  
EL HORN, WI 5 2

**DANIEL R. EHOE**  
Architect  
262-723-2660

**WILLIAM R. HENRY**  
Architect-P.E.  
262-723-4399

February 13, 2020

**City of Elkhorn**  
9 South Broad Street  
Elkhorn, WI 53121

Attn: Mr. James Heilman  
City Administrator/Finance Director

Re: Proposed New Shelter Building at  
**BABE MANN PAR**  
Elkhorn, Wisconsin  
Job No. 2001

Dear Mr. Heilman:

As requested, we have reviewed various types of park shelter structures and analyzed construction materials as they relate to construction costs. Related projects considered are attached and include the following

- Wilson Farm Meats Pavilion, Elkhorn, Wisconsin
- Booth Lake Memorial Park Lower Pavilion, East Troy, Wisconsin
- Sunset Park Lions Den, Elkhorn, Wisconsin
- Lake Geneva Schools Athletic Complex, Lake Geneva, Wisconsin
- Lewis Park Shelter, McFarland, Wisconsin

When we initially met to discuss the Babe Mann Park Shelter project, Recreation Director Karl Sorvick provided a conceptual floor plan sketch and renderings of a similar project proposed for the Village of Cottage Grove. Two of these renderings are also attached. In our opinion, the type of construction shown in the Cottage Grove renderings is similar to that used at the Lake Geneva Schools Athletic Complex toilet/concessions building. While that project has a smaller percentage of covered shelter area than the proposed Babe Mann Park Shelter, the project under construction at Wilson Farm Meats has a larger percentage of covered shelter as is contemplated for the City's project.

Averaging the construction costs between the Lake Geneva Schools and Wilson Farm Meats projects may provide a realistic per square foot construction budget for the Babe Mann Park Shelter project. This analysis is included with the attached renderings of the proposed Cottage Grove project and results in a range of \$169 to \$178 per square foot depending on the size of the project.

Also attached are the Option A and B budgets we submitted early last month for the Babe Mann Park Shelter project. Based on our review of the other projects in this report and the above analysis, we believe the Option A and B building construction budgets of \$179 to \$186 per square foot are reasonable for the type of construction currently proposed for the new Babe Mann Park Shelter.

Page 2  
February 13, 2020  
Mr. James Heilman

If the City wishes to consider an all wood frame vs. masonry structure, or wood frame with limited masonry veneer accents, lower construction costs per square foot could most likely be achieved. The City will have to consider the size of park shelter facility desired, the type of construction and materials to be used, and balance those within the overall project budget to be established.

Very truly yours,

**EHOE-HENRY ASSOCIATES, INC.**

*William R. Henry*

William R. Henry  
Architect-PE

WRH/amw

cc: file

Enc: Related Project Data Sheets  
Option A and B Budgets



# Wilson Farm Meats Pavilion

Elkhorn, Wisconsin



**Scope:** New construction of 3,000 SF building  
(2,250 SF covered shelter & 750 SF toilets/kitchen)

**Year:** 2020

**Cost:** \$312,000 to \$332,000 (\$104/SF to \$110.50/SF)

**Adjusted Cost / SF:** \$111.00 to \$122.00

(Based on 1,440 SF to 1,950 SF total area of proposed Babe Mann Park Shelter project.)

## CONSTRUCTION BUDGET

1,440 SF @ \$122.00 = \$175,680 to

1,920 SF @ \$111.00 = \$213,120

**Other Cost Factors:** Private vs. public owner  
Bonding not required  
No masonry  
No public bidding requirements

# Booth Lake Memorial Park Lower Pavilion

East Troy, Wisconsin



Scope: Remodeling of covered shelter only – 720 SF

Year: 2006

Cost: \$44,300 (\$61.50/SF)

Adjusted Cost / SF: \$132.00 to \$136.50

(Based on 900 SF to 1,200 SF covered shelter portion of proposed Babe Mann Park Shelter project.)

## CONSTRUCTION BUDGET FOR COVERED SHELTER ONLY

900 SF @ \$136.50 = \$122,850 to

1,200 SF @ \$132.00 = \$158,400

**Note:** Toilets/concessions area of 540 SF to 720 SF not included in budget.

# Sunset Park Lions Den

Elkhorn, Wisconsin



- Scope:** Approximately 2,100 SF building consisting of covered shelter and toilets/concessions areas
- Year:** Originally built between 1970 and 1975  
Demolished and reconstructed in 2006
- Cost:** Unknown
- Cost Factors:** Masonry walls and brick veneer wainscot  
Timber beams and columns  
Stone/brick fireplace

# Lake Geneva Schools Athletic Complex

Lake Geneva, Wisconsin



Scope: New construction of 2,500 SF toilet/concessions building

Year: 1998

Cost: \$276,000 (\$110.50/SF)

Adjusted Cost / SF: \$227.00 to \$234.00

(Based on 1,440 SF to 1,950 SF total area of proposed Babe Mann Park Shelter project.)

## CONSTRUCTION BUDGET

1,440 SF @ \$234.00 = \$336,960 to

1,920 SF @ \$227.00 = \$435,840



# Lewis Park Shelter

McFarland, Wisconsin



Scope: New construction of 2,765 SF building  
(672 SF covered shelter & 2,093 SF toilets/concessions/  
gathering space)

Year: 2016

Cost: \$676,000 (\$244.50/SF)

Adjusted Cost / SF: \$288.50 to \$301.00

(Based on 1,440 SF to 1,920 SF total area of proposed Babe Mann Park Shelter project.)

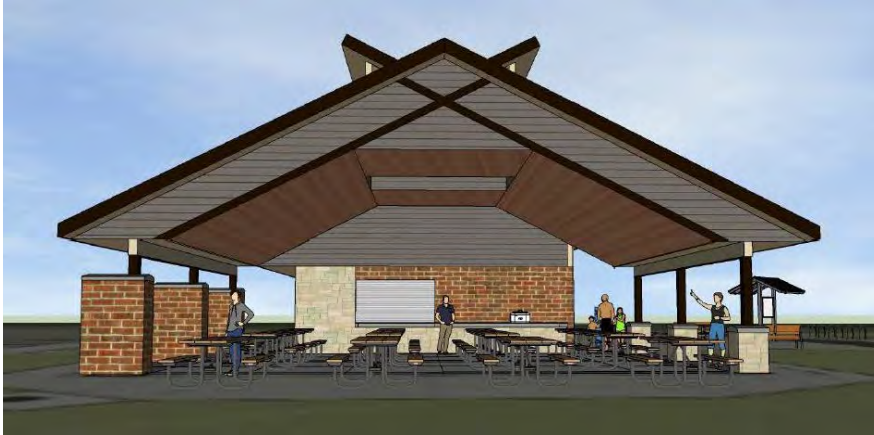
## CONSTRUCTION BUDGET

1,440 SF	@	\$301.00	=	\$433,440 to
1,920 SF	@	\$288.50	=	\$553,920

# Proposed Bakken Park Shelter

Cottage Grove, Wisconsin

(similar concept initially proposed for Babe Mann Park Shelter)



Construction type shown in renderings is most similar to Lake Geneva Schools Athletic Complex, but with similar percentage of covered shelter area vs. toilet/concessions area as at Wilson Farm Meats Pavilion. If costs/SF are averaged:

LGS:	\$227	to	\$234
WFM:	<u>\$111</u>	to	<u>\$122</u>

Average Cost / SF: \$169 to \$178

Proposed Building  
Construction Cost /  
SF in Babe Mann  
Park Shelter  
Option A and B  
Budgets:

\$179	to	\$186
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25 NORTH WISCONSIN STREET  
ELKHORN, WI 53122

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WILLIAM R. HENRY  
Architect-P.E.  
262-723-4399

January 3, 2020

Proposed New Shelter Building at  
**BABE MANN PAR**  
Elkhorn, Wisconsin

**CONCEPTUAL PROJECT BUDGET SUMMARY - OPTION A: 50,000 SF BUILDING**

**Site Development Work:**

Improvements to Parking Lot, Drives, Walks, etc:	Separate Project
Site Utilities (Water and Sanitary):	Existing To Be Reused
Demolition of Existing Building (Allowance):	\$ 22,000
Landscaping:	By Others - Not In Contract
<b>Subtotal Site Development Work:</b>	<b>\$ 22,000</b>

**Building Construction Work ( 50,000 SF Covered Shelter 5,000 SF Toilets/Concessions):**

General Construction:	\$ 267,840
Plumbing:	Included
Ventilation:	Included
Electrical:	Included
<b>Subtotal Building Construction Work:</b>	<b>\$ 267,840</b>
Building Construction Budget per Square Foot:	\$ 186.00

<b>Total Site Development Building Construction Work:</b>	<b>\$ 289,840</b>
Total Construction Budget per Square Foot:	\$ 201.28

**Architectural - Engineering Fees:** \$ 2,000

**Miscellaneous Costs:**

Local Fees, Printing Costs, etc:	\$ 1,959
Topographic Survey:	By Kapur
Soil Borings & Geotechnical Report:	Not Required
Foodservice Equipment:	By Others - Not In Contract
Contingency (approx. 10% of Total Construction Work):	30,215
<b>Subtotal Miscellaneous Costs:</b>	<b>\$ 2,174</b>

**TOTAL PROJECT BUDGET:** \$ 50,000

Respectfully submitted,

EHOE - HENRY ASSOCIATES, INC.

*William R. Henry*

William R. Henry  
Architect - P.E.



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Architect-P.E.  
262-723-4399

January 3, 2020

Proposed New Shelter Building at  
**BABE MANN PAR**  
Elkhorn, Wisconsin

**CONCEPTUAL PROJECT BUDGET SUMMARY - OPTION B: 20 SF BUILDING**

**Site Development Work:**

Improvements to Parking Lot, Drives, Walks, etc:	Separate Project
Site Utilities (Water and Sanitary):	Existing To Be Reused
Demolition of Existing Building (Allowance):	\$ 22,000
Landscaping:	By Others - Not In Contract
<b>Subtotal Site Development Work:</b>	<b>\$ 22,000</b>

**Building Construction Work ( 200 SF Covered Shelter 20 SF Toilets/Concessions):**

General Construction:	\$ 343,680
Plumbing:	Included
Ventilation:	Included
Electrical:	Included
<b>Subtotal Building Construction Work:</b>	<b>\$ 343,680</b>
Building Construction Budget per Square Foot:	\$ 179.00

<b>Total Site Development Building Construction Work:</b>	<b>\$ 365,680</b>
Total Construction Budget per Square Foot:	\$ 190.46

**Architectural - Engineering Fees:** \$ 80

**Miscellaneous Costs:**

Local Fees, Printing Costs, etc:	\$ 2,366
Topographic Survey:	By Kapur
Soil Borings & Geotechnical Report:	Not Required
Foodservice Equipment:	By Others - Not In Contract
Contingency (10% of Total Construction Work):	36,568
<b>Subtotal Miscellaneous Costs:</b>	<b>\$ 2,366</b>

**TOTAL PROJECT BUDGET:** \$ 368,046

Respectfully submitted,

EHOE - HENRY ASSOCIATES, INC.

*William R. Henry*

William R. Henry  
Architect - P.E.





**AIA**<sup>®</sup>

# Document B104<sup>™</sup> – 2007

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

**AGREEMENT** made as of the **Sixth** day of **January**  
in the year **Twenty Twenty**  
*(In words, indicate day, month and year)*

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

CITY OF ELKHORN  
9 South Broad Street  
Elkhorn, WI 53121

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

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

KEHOE-HENRY & ASSOCIATES, INC.  
25 North Wisconsin Street  
Elkhorn, WI 53121

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

See attached Page 1A Project Description.

The Owner and Architect agree as follows.

Init.

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## PROJECT DESCRIPTION

The new Park Shelter building to be located in Babe Mann Park, Proctor Drive, Elkhorn, Wisconsin shall include the following:

1. Demolition of the existing Park Shelter building.
2. A new Park Shelter building of between approximately 1,440 SF and 1,920 SF.
3. The new Park Shelter building shall contain an open, covered shelter area of between approximately 900 SF and 1,200 SF.
4. The new Park Shelter building shall contain public toilets, concessions area, and other support space of between approximately 540 SF and 720 SF.
5. Site improvements may include a new water service to serve the new Park Shelter building.
6. The existing sanitary sewer serving the current Park Shelter building is to be reused.
7. Other site improvements such as storm water management features, public parking, drives, walks, etc. are to be designed by others as part of separate/future project(s).



## TABLE OF ARTICLES

1	INITIAL INFORMATION
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3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

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

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

See Project Description on Page 1A included herewith.

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

### ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

See Article 12.

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

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services.

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

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's



approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

See Article 12.

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

### § 3.2 DESIGN PHASE SERVICES

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

§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and 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 Project requirements.

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

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

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

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

### § 3.3 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

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

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

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

3.3.6 BIDDING PHASE SERVICES See Article 12.

### § 3.4 CONSTRUCTION PHASE SERVICES

#### § 3.4.1 GENERAL

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

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the



Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

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

#### § 3.4.2 EVALUATIONS OF THE WORK

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

§ 3.4.2.2 The Architect ~~has the authority to reject Work that does not conform to the Contract Documents and~~ has the authority to require inspection or testing of the Work. **See Article 12.**

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

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

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

#### § 3.4.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

#### § 3.4.4 SUBMITTALS

§ 3.4.4.1 The Architect shall review ~~and approve~~ or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the



appropriate performance and design criteria that such services must satisfy. The Architect shall review shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

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

#### § 3.4.5 CHANGES IN THE WORK

The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.2.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

#### § 3.4.6 PROJECT COMPLETION

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

### ARTICLE 4 ADDITIONAL SERVICES

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

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

See Article 12.

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

See Article 12.

~~§ 4.2.1 The Architect has included in Basic Services ----- (-----) site visits over the duration of the Project during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.~~

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

§ 4.2.3 If the services covered by this Agreement have not been completed within **Eighteen** ( 18 ) 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

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

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

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

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

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

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

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

## ARTICLE 6 COST OF THE WORK

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

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

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



requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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



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

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

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

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

~~§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.~~

### § 8.2 MEDIATION

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

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

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

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

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

### § 8.3 ARBITRATION

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.



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

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

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

#### § 8.3.4 CONSOLIDATION OR JOINDER

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

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

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

### ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

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

See Article 12.



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

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

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

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

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

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

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

#### ARTICLE 11 COMPENSATION

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

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

See Article 12.

§ 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.)*

Compensation shall be computed in accordance with the hourly rates set forth in Article 11, Paragraph 11.7.

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

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

Compensation shall be computed in accordance with the hourly rates set forth in Article 11, Paragraph 11.7.



§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus **Twenty** percent ( **20** %), 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:

Design Development Phase:	<b>Forty</b>	percent (	<b>40</b>	)
Construction Documents Phase:	<b>Forty</b>	percent (	<b>40</b>	)
<del>Construction Phase:</del> Bidding Phase:	<b>Five</b>	percent (	<b>5</b>	)
Construction Phase:	<b>Fifteen</b>	percent (	<b>15</b>	)
Total Basic Compensation		one hundred percent (	<b>100.00</b>	)

See Article 12.

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

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

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

See Article 12.

#### § 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **Ten** percent ( **10** %) of the expenses incurred.



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

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

**§ 11.10 PAYMENTS TO THE ARCHITECT**

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

**§ 11.10.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid **Thirty** ( **30** ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.  
*(Insert rate of monthly or annual interest agreed upon.)*

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

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

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

See attached Article 12, Pages 12A through 12C.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

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

**§ 13.2** This Agreement incorporates the following documents listed below:  
*(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)*

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

\_\_\_\_\_  
**OWNER** (Signature) **Howie Reynolds, Mayor**

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

**William R. Henry, Vice President**

\_\_\_\_\_  
*(Printed name and title)* **Cairie Virrueta, City Clerk** *(Printed name and title)*

**CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.**

**ARTICLE 12**  
**SPECIAL TERMS AND CONDITIONS**

**12.1 Supplement Article 2 – Architect's Responsibilities as follows:**

¶ 2.1 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the insurance requirements required by the Owner exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

**.1 General Liability:**

See attached sample Certificate of Liability Insurance produced by BWO-Schmitz Insurance Services dated 06/15/2019.

**.2 Automobile Liability:**

See attached sample Certificate of Liability Insurance produced by BWO-Schmitz Insurance Services dated 06/15/2019.

**.3 Workers' Compensation:**

See attached sample Certificate of Liability Insurance produced by BWO-Schmitz Insurance Services dated 06/15/2019.

**.4 Professional Liability:**

See attached sample Certificate of Professional Liability Insurance produced by Willis of Illinois dated 06/18/2019.

**12.2 Supplement Article 3 – Scope of Architect's Basic Services as follows:**

¶ 3.1.2.1 The schedule for performance of the Architect's services is proposed as follows.

Design Phase Services – January 2020 through mid-February 2020

Owner Review & Approval – second half of February 2020

Construction Documents Phase Services – March 2020 through April 2020

Owner Review & Approval – first half of May 2020

Bidding Phase Services – mid-May 2020 through June 2020

Construction Phase Services – July 2020 anticipated commencement of construction (beginning with demolition of existing building after 4th of July) through December 2020 anticipated Substantial Completion

**12.3 Supplement Article 3 – Scope of Architect's Basic Services as follows:**

¶ 3.3.6 **BIDDING PHASE SERVICES**

¶ 3.3.6.1 **General**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining competitive bids; (2) confirming responsiveness of bids; (3) determining the successful bid, if any; and (4) awarding and preparing contracts for construction.

¶ 3.3.6.2 **COMPETITIVE BIDDING**

¶ 3.3.6.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

¶ 3.3.6.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 arranging for the reproduction of Bidding Documents and distribution to prospective bidders;
- .2 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and
- .3 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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

¶ 3.4.2.2 Add: The Architect may recommend to the Owner rejection of Work which, in the Architect's professional opinion, does not conform to the Contract Documents.

## **12.2 Supplement Article 4 – Additional Services as follows:**

¶ 4.1.1 The fee for Basic Services is based on all municipal services being readily available, including municipal water, sanitary sewer, and storm sewer. The Architect shall be compensated for Additional Services of civil engineering for extensions of municipal services to the site, storm water management analyses and design, and other related services in accordance with ¶ 11.2 and 11.4. If required, the Architect shall provide services for a new water service from the municipal water main to the new park shelter building as part of Basic Services.

¶ 4.1.2 The Architect shall assist the Owner with the local municipal review process and shall attend municipal proceedings and public hearings in connection with the municipal review of the Project as part of Basic Services.

¶ 4.2.1 Paragraph to read as follows:

Upon recognizing the need to perform 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 Additional Services until the Architect receives the Owner's written authorization. The Owner acknowledges that until the Owner's written authorization is received by the Architect, the Project may be delayed.

## **12.6 Supplement Article 9 – Termination or Suspension as follows:**

¶ 9.6.1 The Owner acknowledges that the services performed by the Architect prior to Termination not the fault of the Architect may exceed the compensation for each phase of services set forth in ¶ 11.5. Therefore, in addition to the compensation for services and expenses set forth in ¶ 9.6, the Owner agrees to compensate the Architect for all services performed prior to Termination which exceed the compensation for each phase of services set forth in ¶ 11.5.

## **12.7 Supplement Article 11 – Compensation as follows:**

¶ 11.1.1 Compensation for Basic Services as described in Article 3, ¶ 3.2 through 3.4, Design Phase through Construction Phase Services, shall be computed in accordance with the hourly rates set forth in Article 11, ¶ 11.7 and multiple set forth in ¶ 11.4, and shall not exceed the following additive sliding scale percentages of Construction Cost as defined in Article 6.

**Construction Cost**

**Percentage Fee**

For the first \$150,000	10.50%
For the next \$150,000	8.75%
For the remainder	7.50%

¶ 11.5.1 Utilizing ¶ 11.1.1 above and ¶ 11.5 on Page 11, two examples of how compensation for Basic Services shall be computed are as follows.

**IF THE PROJECT CONSTRUCTION COSTS ARE: \$ 289,840 or \$365,680**

**THEN THE COMPUTATION FOR BASIC SERVICES SHALL BE:**

**Construction Cost**

**Percentage Fee**

For the first \$150,000	10.50%	\$ 15,750	or	\$ 15,750
For the next \$150,000	8.75%	12,236	or	13,125
For the remainder	7.50%	-	or	4,926

Total Basic Compensation: \$ 27,986 or \$ 33,801

**THE TOTAL BASIC COMPENSATION FOR EACH PHASE OF SERVICES SHALL BE AS FOLLOWS:**

Design Phase:	40%	\$ 11,194	or	\$ 13,520
Construction Documents Phase:	40%	11,194	or	13,520
Bidding Phase:	5%	1,399	or	1,690
Construction Phase:	15%	4,198	or	5,070

Total Basic Compensation: 100% \$ 27,986 or \$ 33,801

¶ 11.7.1 Hourly billing rates are as follows:

Principal	\$185.00 per hour
Architect/Engineer I	\$160.00 per hour
Architect/Engineer II	\$135.00 per hour
Intern Architect/Engineer-in-Training	\$110.00 per hour
Drafter I	\$100.00 per hour
Drafter II	\$ 80.00 per hour
Drafter III/Administrative/Clerical	\$ 70.00 per hour





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/15/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER <b>BWO-Schmitz Ins Serv, LLC</b> 7645 Pershing Blvd Ste A Kenosha, WI 53142	CONTACT NAME: <b>John F Schmitz</b>	FAX (A/C, No): <b>262-925-3401</b>	
	PHONE (A/C, No, Ext): <b>262-925-3403</b>	E-MAIL ADDRESS: <b>John@schmitzinsuranceservices.com</b>	
INSURED <b>Kehoe-Henry and Associates, Inc.</b> 25 N. Wisconsin Street Elkhorn, WI 53121	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: <b>STATE AUTO INS CO</b>	<b>25127</b>	
	INSURER B: <b>State Auto</b>	<b>25127</b>	
	INSURER C:		
	INSURER D:		
	INSURER E:		

## COVERAGES

CERTIFICATE NUMBER: 00000000-0

REVISION NUMBER: 12

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD : WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:		BOP2833227	02/01/2019	02/01/2020	EACH OCCURRENCE \$ <b>2,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>300,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>2,000,000</b> GENERAL AGGREGATE \$ <b>4,000,000</b> PRODUCTS - COM/OP AGG \$ <b>4,000,000</b>
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/>		BAP2418586	02/01/2019	02/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ <b>1,000,000</b> BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS UAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ <b>0</b>		CXS2130147	02/01/2019	02/01/2020	EACH OCCURRENCE \$ <b>1,000,000</b> AGGREGATE \$ <b>1,000,000</b>
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	WCP2234852	02/01/2019	02/01/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>500,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>500,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>500,000</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

## CERTIFICATE HOLDER

## CANCELLATION

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  (JFS)

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
6/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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<b>PRODUCER</b>  WILLIS OF ILLINOIS, INC. 233 S. WACKER DR, STE 2000 CHICAGO IL 60606		<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (888) 780-5381 FAX (A/C, No): (866) 828-2424 E-MAIL ADDRESS: Certificate@Hanover.com	
<b>INSURED</b>  KEHOE-HENRY & ASSOCIATES INC 25 N WISCONSIN STREET ELKHORN WI 53121		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Hanover Insurance Co NAIC # 22292 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

<b>COVERAGES</b>	<b>CERTIFICATE NUMBER:</b>	<b>REVISION NUMBER:</b>
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THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Architects & Engineers Prof Liab	N	N	LHC 9585477 07	06/17/2019	06/17/2020	Claims-Made: \$1M Ea Claim/\$1M Agg

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
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	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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February 3, 2020  
Mr. James Heilman  
City of Elkhorn  
9 South Broad Street  
Elkhorn, WI 53121

RE: Park Shelter Building at Babe Mann Park  
Elkhorn, WI 53121  
Proposal for Survey Services

Dear James,

Kapur & Associates, Inc. is pleased to submit this proposal for a boundary and topographic design survey pursuant to the Wisconsin State Administration Code AE – 7 standards. Containing approximately 51 acres, in the City of Elkhorn (Tax Parcel YV SE 00016B), the project is located on Proctor Drive. A title letter report is required for this tax parcel and can be acquired from a title company from usually around \$300 - \$600 per tax parcel (an estimate can be requested prior). This is to acquire all applicable deeds, uncover recorded easements, and encumbrances on the site to be developed.

**SCOPE OF SERVICES:**

The general scope of services for this proposal includes creating a Plat of Survey in accordance with pursuant to the Wisconsin State Administration Code AE – 7 standards. Including: setting vertical and horizontal survey control, collecting site plan topographic information (utilities (above and below ground as possible), buildings, fences, gravel, pavement, and trees (tree lines outside of the designated area), creating a legal description from information acquired from the title research and boundary field survey, setting property corner monumentation (setting new property corners if needed), creating a surface with 1 foot contours, showing all recorded easements, encroachments (if any) and rights of way in record.

The cost for the above described survey services is a lump sum fee of \$7,925.

This fee is determined based upon our understanding of the project as described in this proposal. Expansion or changes to the scope of work, performance time, or unanticipated site conditions will require a contract amendment.

Thank you for the opportunity to serve you. We look forward to working with you on this project. Should you have any questions, or require further information, please call me at (262) 767-2747, directly at 262-758-6011 or email: [gsplinter@kapurinc.com](mailto:gsplinter@kapurinc.com).

Kind Regards,

Gary R. Splinter



**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance to amend Chapter 5.17 of the Elkhorn Municipal Code**

**BE IT ORDAINED** by the Common Council that the Elkhorn Municipal Code is hereby amended at Chapter 5.17 as follows:

Section 5.17 is hereby created to read:

Sec. 5.17 - Open burning

**5.17.1. Fires within the corporate limits of the City of Elkhorn to be regulated.**

- a. Fires in the Public Rights of Way Prohibited. No person shall start any fire or cause to be burned on any street, alley, sidewalk or public way in any district within the City any leaves, grass, wood, rubbish or other material of any kind at any time.
- b. Fires on Private Property Regulated. No person shall burn or start any fire or cause to be burned any materials of any kind upon any lot or parcel of land in any district within the City at any time without a burning permit. Permits shall not be granted, except for the reasons set forth below in this Ordinance.
- c. Controlled Fires Monitored By Fire Department. A burning permit may be issued by the Fire Department for prescribed vegetation management purposes subject to reasonable conditions to mitigate fire hazards. Burning permits shall apply to individual parcels or occupancies and are not transferable from person to person, parcel to parcel or occupancy to occupancy; however, burning permits may encompass multiple parcels under common ownership if part of a common vegetation management project.
- d. Fire Department Training Exercises. The Fire Department for purposes of training its personnel and general fire safety are permitted to burn fires within the city limits of the City of Elkhorn and are exempt from the provisions of this section when engaged in official Fire Department training or safety work.

**5.17.2. Outdoor Recreational Fire Pits, Fireplaces and Camp or Other Fires Permitted As Set Forth Herein.**

Definitions

(1) Outdoor commercially manufactured portable fireplace. Any commercially available appliance designed to contain a wood fire when operated according to the manufacturer's instructions.

(2) Outdoor constructed permanent fireplaces. Any brick, stone, concrete or metal fireplace that is constructed in a permanent location with a chimney. These shall be considered accessory structures requiring a building permit and approved by the building Inspector or his designee according to applicable building codes.

(3) Gas fueled recreational fire pits. Any commercially available appliance designed to exclusively burn natural gas or propane when installed and operated according the manufacturer's instructions.

(4) Campfire. A campfire is defined below in Section 5.17.4. A campfire, below ground pit, or raised enclosure lined with non-combustible material, such as stone, metal, soil, brick or concrete. This list is not to be considered exclusive. This thickness must be sufficient to contain the fire completely within its confines.

### **5.17.3. General Requirements**

a. Only dry wood may be burned in commercially manufactured outdoor portable fireplaces or outdoor wood burning recreational fire pits or outdoor constructed permanent fireplaces subject to the following conditions:

b. No outdoor fireplace or fire pit shall be used within 15 feet of any structure or ten feet of any lot line unless closer placements are approved by the fire chief.

c. No fire permitted under this section shall be of such a size or contain materials causing the smoke from the fire to become a vision hazard for nearby roadways or obstruction of vehicle travel. No fireplace or fire pit shall be used on a wood deck, wood porch, or wood patio.

d. An ABC type fire extinguisher, charged garden hose, or other method of fire control must be readily available.

e. The fireplace or fire pit must be supervised or attended at all times while in use by a responsible adult. The fire must be completely extinguished before the fireplace or fire pit is left unsupervised.

f. No fireplace or fire pit shall be used if because of neglect or damage to the fireplace or fire pit it can no longer safely contain the fire. Use of any fireplace or fire pit or campfire shall be discontinued if the City has issued a temporary outdoor burning ban, based upon conditions determined by the Fire Department to be unsafe. Such notices shall be made to the public on the City's public website. Fireplace, fire pit or campfire operators are responsible to check the City's website for notices to determine if such a temporary ban has been put in place.

g. The fire department may extinguish any fire ignited or maintained contrary to this section.

h. Persons utilizing and maintaining outdoor fires shall be responsible for any liability resulting from damage caused by such fires.

#### **5.17.4. Burn Permit Required**

Permit Required. Campfires and commercial cooking fires are allowed only upon a permit having been issued by the Fire Chief or designee. Such permitted fires shall be subject to the following requirements:

1. Campfires shall use untreated wood as a combustible source.
2. Campfires shall be located a minimum of 25' from any occupied dwelling, wood structure, street, alley, property line, or any building.
3. Campfires shall have a pit no larger than 48" in diameter with noncombustible ring of at least 12" high.
4. The fire level shall not be stacked higher than 2'.
5. Campfires shall be allowed to burn between 6:00 p.m. and 10:00 p.m. Sunday through Thursday and between 6:00 p.m. 12:00 midnight Friday and Saturday.
6. Campfires shall be extinguished by dousing with water.

**5.17.5. Incinerators Prohibited.** The use of outdoor incinerators, drums, barrels, or other containers for the burning of leaves, trash, garbage, wood, or other materials is prohibited.

**5.17.6. Permit Application.** Applications for permits shall be made five (5) days in advance of the first fire for which they are requested. Permits can be requested for a single use or for an annual use. Any permit shall expire one (1) year from the date of issuance and the City shall maintain records to keep track of permits issued.

#### **5.17. 7. Permit Fee.**

- a. Single Use Permits. A permit fee of \$10.00 shall be paid at the time an application is filed with the City Clerk for a one-day permit.
- b. Seasonal Use Permits. A fee of \$25.00 shall be paid at the time an application is filed with the City Clerk for a annual multiple-use permit.

**5.17.8. Permit Revocation.** The City Fire Chief or his or her designee, has the express right to revoke any permit issued under this Section for cause such as failure to abide by the terms and limitations set forth within this Ordinance.

**5.17.9 Penalty.** Whoever shall violate any provision of this Chapter shall be subject to a penalty as prescribed by Section 25.04 of this Code.

**5.17.10 Enforcement.** The Fire Chief, Police Chief or their designated representative may issue citations for violations of this section.

This Ordinance shall be in force from and after its introduction and publication as provided by Statutes.

APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Howard Reynolds, Mayor

ATTEST:

\_\_\_\_\_  
Cairie Virrueta, City Clerk

1<sup>st</sup> Reading \_\_\_\_\_  
2<sup>nd</sup> Reading \_\_\_\_\_  
Adopted \_\_\_\_\_  
Published \_\_\_\_\_

N112 W15568 Mequon Road  
 Germantown, WI 53022  
 Phone: (877) 834-8681  
 Fax: (877) 834-8682

## EQUIPMENT LEASE AGREEMENT

Lease # \_\_\_\_\_

This lease has been written in plain English. When we use the words Lessee, you and yours in this Lease, we mean you, our customer, which is the Lessee indicated below. When we use the words we, us and ours in this Lease, we mean the Lessor, Leasing Services, LLC REV 0412

<b>LESSEE</b> (Complete Legal Name):	
<b>Billing Address:</b>	
<small>Street Address</small>	<small>City, State, Zip</small>
<b>Equipment Location:</b>	
<b>Phone:</b>	<b>Fax:</b>
<b>Business Type:</b>	<b>State of Incorporation:</b>
<b>Description of Leased Equipment:</b>	<b>Serial Number:</b>

Sample Lease

Under \$25,000

**SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF**

Vendor: \_\_\_\_\_ Address: \_\_\_\_\_

**AGENCY DISCLAIMER**  
 Neither the vendor, broker nor any sales person is an agent of Lessor or its assignee nor are they authorized to waive or alter the term of this Lease. Their representations shall in no way affect Lessee or Lessor's rights and obligations as herein set forth.

Payment Schedule:	Initial Term	Payment Frequency	Security Deposit	Amount of Each Payment (plus applicable taxes)	Document Fee
		Monthly			\$

**NON-CANCELLABLE LEASE TERMS AND CONDITIONS**

1. You (the customer) want to acquire the above equipment from the above vendor. You want us (the leasing company) to buy it and then lease it to you. The Lease will not begin until we sign it, with a non-refundable documentation fee, and once it starts it will continue for the entire Lease Term stated above. You will unconditionally pay us all amounts due, without any right to reduction or set-off. If we do not receive your payment by its due date, there will be a late fee equal to \$20.00 or 15% of the late amount, which ever is greater (or, if less, the maximum amount allowable under applicable law). We may charge you a partial payment to cover the time between delivery and the due date for the first regular payment. No more than 180 days and no less than 90 days prior to the end of the Lease Term, you shall give us written notice of your intention to either return the equipment to us or purchase the equipment for the fair market purchase option price. Provided you have given such timely notice, you shall, at your cost, return the equipment to us in good working condition in a manner and to a location designated by us, or remit the purchase option. If you fail to so notify us or, having notified us, you fail to return the equipment within 15 days after the end of the Lease Term, or you fail to remit the purchase option, the Lease shall automatically renew on a month-to-month basis under the same terms and conditions described herein. You agree to reimburse us for any cost we incur to refurbish returned equipment. You agree the security deposit will not bear interest and that we may apply it to any amount owed to us, and should we do so, you agree to restore the security deposit to its original amount. You may request the return of the security deposit only after all of your obligations under this Lease have been met in full. To expedite the Lease, you asked us to accept your faxed signature and have agreed it will be considered as good as your original signature and admissible in court as conclusive evidence of this Lease. You agree to allow us to adjust the payment amount above if the final equipment cost varies from the amount the payment was based upon.
2. You acknowledge we will insert the equipment serial numbers after you have signed the lease and before we accept the lease and hereby authorize us to insert serial numbers above in the Description of Leased Equipment section.
3. You alone selected the vendor and the equipment. You asked us to buy it. We are not related to the vendor and we cannot get a refund, nor is the vendor allowed to waive or modify any term of this Lease. Therefore, the Lease cannot be cancelled by you for any reason, even if the equipment fails or is damaged and it is not your fault. We are leasing it to you ~~as is~~ and we disclaim all express and implied warranties, including any warranty of merchantability or fitness for a particular purpose. You are responsible for all service. **The vendor or manufacturer may have given you warranties. You may contact them to get a statement of those warranties, if any. We assign to you any warranties the vendor may have given us. You shall settle any dispute regarding the equipment's performance directly with the vendor.** The Equipment will be used only for business and not for personal, family or household purposes. You will keep the equipment only at the above location and shall not remove the equipment from such location or return it to us without our written consent.
4. If you do not pay us as agreed or fail to perform any other term of this Lease, you agree that we may (i) repossess the equipment and/or (ii) directly debit (charge) your bank account(s) and/or sue you for all past due rent and other charges and for all rent due in the future to the end of the Lease Term. You must also pay our legal, collection and other costs and interest



on all monies due us. **If we do not repossess, we may also directly debit and/or sue you for the "residual" (end of term) equipment value.** This Lease will be governed by the laws of the state of Wisconsin. You agree to be subject to suit in the courts of Wisconsin and waive any right to a jury trial. **We will have title to the equipment at all times. This is a "true lease" and not a loan or installment sale. If this is later determined not to be a "true lease," you grant us a security interest in the equipment. You give us power of attorney to file UCC financing statements, and we may charge you a fee to cover documentation and other costs. You also agree this is a "finance lease" under Article 2A of the Uniform Commercial Code ("UCC"). You waive all rights and remedies you may have under the UCC, including those in Sections 2A-508 through 2A-522.**

**5. You must pay us for all sales, use, property and other taxes and administrative charges relating to your use or our ownership of the equipment. Unless we have otherwise, we will be entitled to all tax benefits (such as depreciation, tax credits, etc.).** If you do anything to disallow our getting these benefits, you will promptly indemnify (pay) us an equivalent amount. You will also indemnify us for all claims, suits, liabilities, damages and losses relating to this Lease or the use or ownership of the equipment. **This promise will continue even after the Lease has ended. You accept all risks of loss and damage to the equipment. You must keep it insured against all risks of loss in an amount equal to the replacement cost and will have us listed on the policy as the "loss payee and additionally insured."** You will be responsible for any monies due over and above the payment from the insurance company. **If you do not give us proof of this insurance, we may, at our option, charge you a risk fee or get it insured ourselves and charge you for the cost.**

6. Because this Lease is based on your own credit rating, you may not assign (transfer) the Lease or your rights to anyone else. **You may not sub-lease or rent the equipment to anyone. We may sell or transfer our interests to another person or company, who will then have all of our rights but none of our obligations. Those obligations will continue to be ours. The rights we pass on to the new person or company will not be subject to any defenses, claims or set-offs you may assert against.**

7. Signer (s) of this Agreement are fully authorized to commit Customer into this non-cancellable binding Agreement. In the event it is determined that Signer (s) were unauthorized to execute this agreement on behalf of the Customer, Signer (s) will be held personally obligated and pursued to the fullest extent of the law for false representation.

**ACCEPTANCE OF ENTIRE LEASE AGREEMENT # \_\_\_\_\_**

This Lease is a binding contract consisting of all preceding terms. **IT CANNOT BE CANCELLED.**  
Read it carefully before signing and call us if you have any questions.

**Accepted by LESSEE, \_\_\_\_\_**

By: \_\_\_\_\_  
Signature of Lessee

\_\_\_\_\_  
Print Name of Signer Title Date

**PERSONAL GUARANTY**

**I hereby personally and unconditionally guarantee all amounts owed by the Leasing Customer under this Lease.** I agree that the Leasing Company may extend, transfer and amend the Lease and I agree to be bound by all such changes. I waive all notices, including notices of transfer, demand and default. I agree the Leasing Company may proceed against me separately from the Leasing Customer. I have authorized the Leasing Company or its designee to use my Consumer Credit Reports from time to time in its credit evaluation and collection processes. I consent to suit in the courts of the State of Wisconsin and waive trial by jury.

X \_\_\_\_\_  
Signature (Individually; No Titles, No Stamps) Date

X \_\_\_\_\_  
Signature (Individually; No Titles, No Stamps) Date

**Accepted by LESSOR, Leasing Services, LLC**

By: \_\_\_\_\_  
Signature of Lessor

\_\_\_\_\_  
Print Name of Signer Title Date