

**INTERGOVERNMENTAL FUNDING AGREEMENT
FOR THE REPAIR OF A COMMUTER FACILITY IN THE
VILLAGE OF HANOVER PARK**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) made and entered into this 5th day of JANUARY, 2017, by and between the Village of Hanover Park, an Illinois municipal corporation (“**Municipality**”), and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”). The Municipality and Metra are hereinafter sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties**.”

RECITALS:

A. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and school districts may contract among themselves in any manner not prohibited by law or by ordinance.

B. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes public agencies in Illinois to exercise jointly with any other public agency any power or powers, privileges, functions or authority which may be exercised by a public agency, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings.

C. Metra has the authority to cooperate with other governmental agencies and desires to contribute grant funds to the Municipality to perform a parking facility storm water study (“**Project**”).

D. The Municipality is authorized to cooperate with Metra in the exercise of its powers and agrees to perform the Project on Metra’s commuter facility located in the Municipality (“**Premises**”).

E. Metra’s goal in providing the agreed upon grant funds to the Municipality is to assure its commuter facility is in a state of good repair.

F. Metra has determined that it is in the best interest of Metra to provide the Municipality the necessary grant funding for the performance of the Project.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, the Parties agree as follows:

1. **THE PROJECT.** The Municipality agrees to undertake and complete the Project, approved by Metra and more specifically described on the on **Exhibit A**, attached to and made a part of this Agreement, (“**Project Scope**”).

2. **AMOUNT OF GRANT.** Metra agrees to provide grant funding to the Municipality in an amount not to exceed Ten Thousand Dollars (\$10,000) (“**Grant**” or “**Grant Funds**”). Metra, at its sole discretion, may agree in writing to increase the amount of the Grant Funding subject to the approval of Metra’s Executive Director, but in no event shall the total amount provided by Metra under this Agreement exceed the actual cost of the Project (“**Project Cost**”). Metra is not liable for any amount in excess of the amount of the Grant Funding. The Municipality agrees that it will provide, or cause to be provided, the cost of project elements which are not approved for Metra’s participation.

3. **METRA’S OBLIGATIONS.**

(a) Metra shall review the proposed list of tasks, materials, and cost estimate submitted by the Municipality (“**Tasks, Materials, and Cost Estimate**”). No work on the Project shall begin prior to Metra’s approval of the Tasks, Materials, and Cost Estimate. Said approved Tasks, Materials, and Cost Estimate shall become a part of this Agreement as **Exhibit B**.

(b) Metra agrees to pay Municipality the Grant Funds pursuant to the terms in conditions of this Agreement.

(c) Metra reserves the right to inspect the Project at any and all stages of Work, as later defined herein, and the right to audit the funding transaction and use of said funds.

4. **MUNICIPALITY’S OBLIGATIONS.**

(a) Municipality shall be responsible for providing the **Tasks, Materials,** and Cost Estimate for the Project, unless Metra agrees in writing to provide such information. Metra will be under no obligation to pay for any work performed prior to Metra approving the Tasks, Materials, and Cost Estimate.

(b) Municipality shall be responsible for the performance of the Project elements (“**Work**”) or causing the Work to be performed in a good and workmanlike manner and in accordance with the Project Scope and this Agreement.

(c) Municipality agrees to comply with all applicable federal laws, state laws and regulations and shall obtain all necessary permits, licenses, consents and other approvals for the performance of the Work.

(d) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all injuries, liabilities, losses, damages, costs, payments and expenses of every kind and nature (including, without limitation, court costs and attorneys’ fees) for claims, demands, actions, suits, proceedings, judgments, settlements arising out of or in any way relating to or occurring in connection with the Project or this Agreement. The indemnities contained in this Section shall survive termination of this Agreement.

(e) Municipality shall permit, and shall require its contractors to permit, Metra or its designated agents to inspect all work, materials, payrolls, and other data, and records with regard to the Project and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project.

5. JOINT OBLIGATIONS.

(a) The Parties agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement, and the intent of the Parties as reflected by the terms of this Agreement, including, without limitation, the enactment of such resolutions and ordinances, the execution of such permits, applications and agreements, and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement, and as may be necessary to give effect to the objectives of this Agreement and the intentions of the Parties as reflected by the terms of this Agreement.

(b) Neither Party shall assign this Agreement to any person or entity without the prior written consent of the other Party.

(c) Municipality and Metra agree that this Agreement is for the benefit of the Parties and not for the benefit of any third party beneficiary. No third party shall have any rights or claims against Metra or the Municipality arising from this Agreement.

(d) The Parties understand that a Railroad flagman may be required whenever Municipality or its contractor is performing the Work on Metra property or other railroad property for the purposes set forth herein, the cost of which will be borne by Metra. In the event it is determined flagging will be required pursuant to a work schedule ("**Schedule**") provided by Municipality, then Metra and Municipality agree to cooperate in scheduling the flagging to facilitate the Project. In the event the Work is being performed on the property of another railroad, but is being funded by Metra, then in that event, the Municipality or its contractor may need to enter into an Entry Agreement with the other railroad, and Metra agrees provide the Municipality any such additional funding to compensate the Municipality for any costs associated with access to another railroad's property or the flagging required by the other railroad.

6. NO OBLIGATIONS TO THIRD PARTIES. Neither Metra nor any state or federal funding agency shall be subject to any obligations or liabilities of contractors of the Municipality or their subcontractors or any other person not a party to this Agreement without Metra's specific consent. This limitation shall apply despite the fact that Metra concurred in or approved of the award of any contract, subcontract or the solicitation thereof. Unless expressly authorized in writing by Metra, the Municipality agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect Metra's interest in any Project Facilities or obligating itself in any manner to any third party with respect to Project Facilities.

7. CONTRACTOR INDEMNIFICATION AND INSURANCE.

(a) In all contracts executed by Municipality for the Project and performance of the Work on the Premises, or to be located on such Premises, Municipality will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend Metra, RTA and NIRCRC, their directors, employees, agents, licensees, successors and assigns from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees.

(b) Municipality will further require its contractor to obtain any insurance that may be required by Metra and cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance, insuring contractor, Metra, RTA and NIRCRC, their directors, employees, agents, successors and assigns from and against any and all risks, liabilities, claims, demands, losses and judgments, including court costs and attorneys' fees, arising from, growing out of or in any way related to the work performed or to be performed by such contractor(s), whether or not any such liability, claim, demand, loss or judgment is due to or arises from the acts, omissions or negligence of such contractor(s), or their officers, employees, agents or subcontractors and their agents or employees.

8. ELIGIBLE COSTS.

(a) Expenditures incurred by Municipality shall be reimbursable under the Project as Eligible Costs to the extent they meet the requirements set forth below:

- (i) Be necessary in order to accomplish the Project; and
- (ii) Be satisfactorily documented.

(b) In the event that it may be impractical to determine exact costs of indirect or service functions, Eligible Costs will include such allowances for these costs as may be approved in writing by Metra.

9. PAYMENT BY METRA. Metra may pay Municipality the Grant Funds in advance of the Work being performed, or may pay Municipality upon submittal of an acceptable invoice to Metra along with any detailed information about the Work that may be required by Metra. In the event Metra has determined that payment to Municipality will be pursuant to a submitted invoice, then in that event, Metra shall process the invoice to verify that such costs are Eligible Costs incurred by Municipality, and shall submit payment within 30 days of the date upon which such payment invoice was timely received. Municipality shall submit invoices for actual costs incurred within 45 days after completion of the Project. Reimbursement of any cost pursuant to this Section shall not constitute a final determination by Metra of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by Municipality. Metra will make a final determination as to the allowability only after a final audit of the Project has been conducted.

10. **DOCUMENTATION OF PROJECT COSTS.** All costs charged to the Project, including any approved services contributed by Municipality or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and property of the charges.

11. **AUDIT AND INSPECTION.** Municipality shall permit, and shall require its contractors to permit, Metra, RTA, or any other state or federal agency providing grant funds, or their designated agents, authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project. Metra also may require the Municipality to furnish, at any time prior to close-out of the Project, audit reports prepared according to generally accepted accounting principles at Municipality's expense. Municipality agrees to promptly comply with recommendations contained in Metra's final audit report.

12. **RIGHT OF METRA TO TERMINATE.** Upon written notice to Municipality, Metra reserves the right to suspend or terminate all or part of the financial assistance herein provided if Municipality is, or has been, in violation of the terms of this Agreement. Any failure to make progress which significantly endangers substantial performance of the Project within a reasonable time shall be deemed to be a violation of the terms of this Agreement. Termination of any part of the Grant Funds will not invalidate obligations properly incurred by Municipality and concurred in by Metra prior to the date of termination to the extent they are non-cancellable. The acceptance of a remittance by Metra of any or all Project Funds previously received by Municipality or the closing out of Metra financial participation in the Project shall not constitute a waiver of any claim which Metra may otherwise have arising out of this Agreement. In the event of termination of this Agreement during the construction phase for reasons other than violation of the terms hereof by Municipality, Metra shall determine the most appropriate course of action to be taken with respect to the Project.

13. **PROJECT SETTLEMENT AND CLOSE-OUT.** Upon receipt of notice of successful completion of the Project or upon termination by Metra, Municipality shall cause a final audit to be performed of the Project to determine the allowability of costs incurred and make settlement of the Metra Grant. If Metra has made payments to Municipality in excess of the total Project Cost of such Metra Grant or if Metra has advanced funds pursuant to an invoice submitted under Section 12 which exceed the Project Cost, Municipality shall promptly remit such excess funds to Metra. Project close-out occurs when Metra notifies Municipality and forwards the final Grant payment or when an appropriate refund of Metra Grant Funds has been received from Municipality and acknowledged by Metra. Grant Funds which have not been dispersed to the Municipality will automatically revert to Metra upon completion of the Project, provided that no outstanding invoices from the Municipality are pending submittal. Close-out shall be subject to any continuing obligations imposed on Municipality by this Agreement or contained in the final notification or acknowledgment from Metra.

14. **CONTRACTS AND PROJECT MANAGEMENT.** Municipality shall execute all contracts and perform all project management activities in accordance with the terms of this Agreement.

15. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with state statutes, as applicable, and the Municipality's established rules, regulations and ordinances for each contract to be let by Municipality that requires constructing or furnishing of any materials, supplies, or equipment to be paid for with Project Funds and Municipality shall give such publicity in its advertisements or calls for bids for each contract as will provide adequate competition. The award for each such contract shall be made by Municipality as soon as practicable to the lowest responsive and qualified bidder or as otherwise specifically approved by Metra.

16. **SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES.** Metra has a vested interest in the settlement of disputes, defaults, or breaches involving any Metra-assisted third party contracts. Metra retains a right to a proportionate share, based on the percentage of the Metra share committed to the Project, of any proceeds derived from any third party recovery. Therefore, Municipality shall avail itself of all legal rights available under any third party contract. Municipality shall notify Metra of any current or prospective litigation pertaining to any compromise or settlement of the Municipality's claim(s) involving any third party contract, before making Metra assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the project account involved unless Metra permits otherwise.

17. **SEVERABILITY.** Metra and Municipality agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.

18. **AMENDMENT.** Metra and Municipality agree that no change or modification to this Agreement or any Exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both parties, and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred in consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement and the Project Budget has been amended to conform thereto.

19. **COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

20. **EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Grant Funds for this Project must be expended upon approved Project elements within 24 months of execution of the Grant contract. Unless otherwise specified in writing by Metra, all unexpended Grant Funds will automatically revert to Metra upon the expiration of this 24 month time period. In no event shall the term of this Agreement exceed 36 months from the date first mentioned above.

21. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between Metra and Municipality and supersedes all prior negotiations and agreements. This Agreement shall be construed in accordance with the internal laws of the State of Illinois. This Agreement may be amended only by written instrument signed by both parties hereto.

22. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered or sent by facsimile transmission, with proof of successful transmission sent by regular mail by the sending Party at the respective addresses shown below, or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered.

(a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director of Government Affairs
Phone: (312) 322-6494

(b) Notices to Municipality shall be sent to:

Village of Hanover Park
2121 West Lake Street
Hanover Park, Illinois 60133
Attn: Public Works Director
Phone: 630-823-5600

23. **GENERAL.**

(a) This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective heirs, legal representatives, successors and assigns. No waiver of any obligation or default of Municipality shall be implied from omission by Metra to take any action on account of such obligation or default, and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated.

(b) Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day.

(c) This Agreement shall be governed by the laws of the State of Illinois. This Agreement provides for the development and maintenance of real estate located within the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction, and enforcement hereof, and all controversies hereunder shall be governed by the applicable statutory and common law of the State of Illinois.

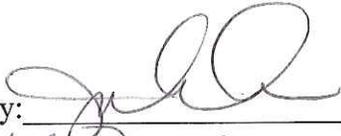
(d) This Agreement, together with the exhibits attached hereto (all of which are incorporated herein by this reference), constitutes the entire Agreement between the Parties with respect to the subject matter hereof.

(e) The execution, delivery of, and performance under this Agreement is pursuant to authority, validity and duly conferred upon the Parties and signatories hereto.

IN WITNESS WHEREOF, this Agreement is entered into by and between the Parties hereto as of the date and year first above written.

VILLAGE OF HANOVER PARK:

**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY:**

By: 

Village Manager
JULIANA A. MACIEL

(please print name and title)

By: 

Donald A Orseno, Executive Director/CEO

Exhibit A
Project Scope

- Perform storm water study on Metra commuter parking facility.
- The village will use the study findings to apply for grants that will assist with engineering and/or construction costs that will rebuild and reconfigure the lot to provide more commuter spaces.

Exhibit B
Cost Estimate

(to be added when available)

Exhibit B

Knight E/A, Inc.
221 North LaSalle Street
Suite 300
Chicago, IL 60601-1211

6-A.7
Telephone (312) 577-3300
Fax (312) 577-3526
www.knightea.com

KNIGHT

Engineers & Architects

November 3, 2016

Ms. Karen Daulton Lange, P.E., CFM,
Village Engineer/ Assistant Director of Public Works
Public Works/ Village of Hanover Park, IL
2041 Lake Street
Hanover Park, Illinois 60133

Subject: Proposal Village of Hanover Park
Commuter Parking Lot Improvements
DuPage County

Dear Ms. Lange,

Knight E/A, Inc. is pleased to submit this proposal for professional engineering services related to the development of a concept level design plan for the Hanover Park Commuter Parking Lot in DuPage County. If you find this proposal to be acceptable, the fully executed copies of this letter, together with the General Terms and Conditions attached hereto which set forth the contractual elements of this agreement, will constitute an agreement between The Village of Hanover Park ("Client") and Knight E/A, Inc. ("Knight") for services on this project.

Project Understanding

It is understood that the subject Hanover Park Commuter Parking Lot was constructed in 1988 with various sections added later over time to meet the increased parking demands of the Metra Rail commuters. Portions of the existing parking lot pavement are in poor condition and in need of repair. To assist the Village with the planning of future improvements for this parking lot, a concept level design plan is needed to evaluate parking lot layout alternatives that include an increased number of parking stalls and more green space and staged construction of these improvements being considered as possible. It is also understood that the concept plan will be developed without any new topographic survey and will use aerial images, as-built plan and other information provided by the Village. The proposed concept plan will also identify where BMP's can be incorporated into the proposed design with the intent of obtaining funding for these improvements through various available grants including the DuPage County Water Quality Grant Program.

Scope of Services

Knight proposes to provide the following scope of services:

- Attend meetings and coordinate with the Client
- Establish Design Criteria to be used with improvements based on local ordinances and standards
- Develop 3 concept level proposed parking lot layout plans for consideration by the Village
- Identify Stormwater BMP's which can be integrated into the proposed parking lot concept plans

Village of Hanover Park
Proposal
November 3, 2016
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KNIGHT

- Provide coordination with DuPage County regarding its Water Quality Grant Program
- Assist Client in identifying other grant funding opportunities

Exclusions

Topographic Survey (As-built plans will be provided by Village)

Schedule

Knight understands that the Client would like for the proposed work to begin immediately upon notice to proceed and be completed with final invoicing submitted prior to December 31, 2016.

Compensation

Knight proposes to perform the above work for an upper limit not to exceed \$9,588.00. Payment for the work shall be for actual hours spent in accordance with the attached Project Hourly Billing Rate table.

Terms and Conditions

This proposal, together with Attachment A - General Terms and Conditions, represents the entire understanding between Client and Knight. If the terms of this agreement are found to be satisfactory, please sign this agreement in the space provided and return one fully executed original to our office.

We appreciate the opportunity to present this proposal and look forward to working with you on this project.

Respectfully Submitted,

KNIGHT E/A, INC.



Robert F. Mack, P.E., CFM
Senior Engineer

KNIGHT E/A, INC.

Village of Hanover Park



Kevin E. Lentz, P.E.
President

[Name]
[Title]
[Date]

Attachments

Knight E/A, Inc.
Village of Hanover Park
Commuter Parking Facility Concept Plan

Date: 11/3/2016

Project Hourly Billing Rates

Classification	Billing Rate
Vice President	238.00
Director of Engineering, Architecture	203.00
Principal Engineer, Planner	196.00
Senior Engineer II, Planner II	185.00
Senior Engineer I, Planner I	162.00
Project Engineer II, Planner II	141.00
Project Engineer I, Planner I	133.00
Engineer IV, Planner IV	127.50
Engineer III, Planner III	105.00
Engineer II, Planner II, Designer III	89.00
Engineer I, Planner I, Designer II	75.00
Senior Construction Engineer	181.00
Construction Engineer	149.50
Materials Coordinator	144.00
Materials Inspector	84.00
Senior Documentation Engineer	133.50
Documentation Engineer	93.00
Construction Technician	65.00
Principal Architect	174.00
Senior Architect	149.00
Project Architect	102.00
Architect III	101.50
Architect II	84.00
Architect I	68.00
Engineer/Planner/Architect Intern	34.00
Senior Environmental Specialist	155.00
Environmental Specialist III	129.00
Environmental Specialist II	95.00
Environmental Specialist I	84.00
Survey Manager	120.00
Survey Party Chief	91.00
Surveyor II	85.00
Surveyor I	67.00
Survey Technician II	61.00
Survey Technician I	56.50
Graphic Designer	69.00
Admin Assistant, Secretary	60.50

Attachment A
General Terms and Conditions

1. General Conditions. The Terms and Conditions set forth herein and in the attached cover letter constitute and offer by Knight E/A, Inc. ("Knight") to perform for the Company to whom this letter is addressed ("Client"), all of the professional design services described in said cover letter as Scope of Services ("Services") for Client's project as defined therein ("Project"). Knight's offer becomes a contract on these same terms and conditions when accepted by Client. This contract supercedes all previous understandings, if any, and constitutes the entire agreement between Knight and Client relating to the Services. Pre-printed terms and conditions on Client purchase orders are not accepted regardless of when issued. Knight shall have the right, at its sole option, to rescind its offer if the Services have not commenced within ninety (90) days of the date of Knight's offer.

2. Knight's Obligations. Knight will endeavor to perform its Services using that degree of care and skill ordinarily exercised by reputable members of its profession performing similar Services. No other warranty, express or implied, is made or intended.

3. Client's Obligations. Client shall provide the following unless specifically included in Knight's scope of services: (i) all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, environmental assessment and impact statements, property, boundary, easement, right-of-way, topographic and utility surveys, property descriptions, zoning, deed and other land use restrictions; all of which Knight may use and rely upon in performing services under this Agreement; (ii) arrange for access to and make all provisions for Knight to enter upon public and private property as required for Knight to perform services under this Agreement; and (iii) give prompt written notice to Knight whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of Knight's services, or any defect or non-conformance in the work of any Contractor.

4. Consultant Services. When Knight procures consultant services required for the Project on behalf of Client, Knight does so as an administrative/invoicing convenience to Client and such consultants shall be considered Client's independent Consultants. Knight makes no representation of, and does not assume responsibility or liability for, the work or services of Client's Independent Consultants. Knight shall be entitled to rely upon the accuracy of services, including reports or surveys, provided by Client's Independent Consultants.

5. Additional Services. Changes in scope or extent of Services may be made from time to time by mutual written agreement. Any additional Services required because of such changes will be charged at Knight's customary rates in effect at that time. Unless otherwise agreed in writing all Terms and Conditions of this contract shall apply. Changes in these Terms and Conditions can only be made by written consent of Knight. Projects suspended for more than thirty (30) days through no fault of Knight shall be subject to a re-mobilization fee compensated as Additional Services.

6. Opinions of Probable Cost. Knight's opinions of probable construction cost represent its best judgment as a design professional familiar with the construction industry and are not guarantees by Knight of actual construction cost. Knight has no control over material cost, labor, methods of construction or bid procedures. Accordingly, Knight does not warrant or represent that contractor bids will not vary from the Project budget or Knight's opinion of probable construction cost. If Client desires greater assurance of cost, Client shall engage the services of an independent construction cost estimator.

7. Payment. Knight shall be entitled to payment for Services rendered on the basis of Knight's invoices submitted monthly. Invoices shall be due and payable within thirty (30) days after receipt. Past due invoices shall accrue interest at the rate of one and one-half percent (1.5%) per month. No retention shall be withheld. All accounts receivable must be current before Knight shall seal drawings, issue drawings to contractors for bidding, or issue drawings for permit application. Knight reserves the right to stop Services

and/or withhold documents for reasons of non-payment and Knight shall not be liable for delays which may result from such stoppage.

Knight shall be compensated for reimbursable expenses such as travel, duplication, plotting, prints, messenger services, additional insured provisions or increased limits of insurance, and other reasonably identifiable costs incurred in connection with the Services. Such reimbursable expenses shall be invoiced at cost or Knight's customary rate, plus five percent (5%) handling and, unless specifically stated otherwise in the cover letter, are in addition to any amounts stated as maximum compensation. The amount of any excise, Value Added Tax (VAT) or gross receipts tax may be imposed by any Authority having jurisdiction shall be added to compensation due hereunder and shall be in addition to any amounts agreed to as maximum compensation.

In the case of lump-sum fee arrangements, invoices shall reflect the percentage of work completed as estimated by Knight to the date indicated on the invoice. For all other fee arrangements, invoices shall indicate the fees earned on the basis of effort expended. Waivers of Lien will be provided, upon request, after receipt by Knight of monies due.

8. Documents. Any and all documents and plans (including Knight's independent professional associates and consultants) in whatever form, including electronic media (disks, tapes, telecommunication, etc.) prepared pursuant to or otherwise resulting from this contract are instruments of professional service and shall be and at all time remain the sole property of Knight. Client shall be entitled to retain hard copy of such documents and plans for informational use and references in connection with Client's use and occupancy of this specific property only. Computer diskettes of project documents will not be released by Knight without agreement in writing stipulating the terms and restriction of usage. Knight will not be responsible for any consequence of re-use, other use, or adaptation of such documents without Knight's express written approval.

9. Facsimile Transmissions. The parties agree that each may rely, without investigation, upon the genuineness and authenticity of any document, including any signature or purported signature, transmitted by facsimile machine, without reviewing or requiring receipt of the original document. Each document or signature so transmitted shall be deemed an enforceable original. Upon request, the transmitting party agrees to provide the receiving party with the original document transmitted by facsimile machine; however, the parties agree that the failure of either party to comply with such a request shall in no way affect the genuineness, authenticity or enforceability of the document. Each party waives and relinquishes as a defense to the formation or enforceability of any contract between the parties, or provisions thereof the fact that a facsimile transmission was used.

10. Certifications, Guarantees and Warranties. Knight shall not be required to sign any documents that would result in Knight having to certify, guarantee or warrant the existence of conditions whose existence Knight cannot ascertain. Client also agrees not to make resolution of any dispute with Knight or payment of any amount due to Knight in any way contingent upon Knight signing any such certification.

11. Insurance. Knight is protected by Professional Liability Insurance, Worker's Compensation Insurance, Commercial Automobile and Vehicle Liability Insurance, and Commercial General Liability Insurance and will furnish certificates upon request. Any additional insurance or limits or "additional insured endorsement" shall be provided as a reimbursable expense at actual cost or Knight's scheduled charge. Client agrees to cause the Contractor to (i) provide Commercial General Liability Insurance and Commercial Automobile and Vehicle Liability Insurance for the Project naming Knight E/A, Inc. and Client as Additional insureds; and (ii) to defend, indemnify, and hold harmless Knight E/A, Inc. and Client from any and all losses, cost, damages, and expenses resulting from the Contractor's Work on the Project, including without limitation claims arising out of or in connection with construction worker injuries. Client agrees to notify Knight of the existence of any Project-Specific Professional Liability Policy applicable to the Project which includes Knight as an Insured by name or reference so that Knight may, in a timely and effective manner coordinate its own insurance program. Should such a Project-Specific Professional Liability Policy be purchased by Client or Client's contractors, Client agrees to make available to Knight a

certified copy of the Policy and to cooperate with Knight in obtaining data with respect to possible claims against that Policy.

12. Indemnification. Knight agrees to the fullest extent permitted by law, to indemnify and hold Client harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused by Knight, or its employees' negligent acts, errors or omissions in the performance of professional services under this Agreement. Client agrees to the fullest extent permitted by law, to indemnify and hold Knight harmless from any loss, cost (including reasonable attorney's fees and costs of defense) or expense for property damage and bodily injury, including death, caused solely by Client, its agents or employees, negligent acts, errors or omissions in the performance of professional services under this Agreement. In no event shall Client be entitled to obtain from Knight, its agents, representatives, officers, employees, or independent contractors, 'damages' arising from Knight's breach of this Agreement, or for its failure to perform its services in accordance with the standard of care provided for herein, in excess of fifty thousand dollars (\$50,000) or the total fee amount paid by client, whichever is less. "Damages" as used herein, shall include tort damages, contract damages, strict liability damages, liquidated damages, economic losses, penalties, fines and attorney's fees. No Claims shall be made more than two (2) years after substantial completion of the Project.

13. Waiver of Contract Breach. The waiver of one party of any breach of this Agreement or the failure of one party to enforce at any time, or for any period of time, any of the provisions hereof, shall be limited to the particular instance, shall not operate or be deemed to waive any future breaches of this Agreement and shall not be construed to be a waiver of any provision, except for the particular instance.

14. Suspension of Services. Client may, at any time, by written order to Knight require Knight to stop all, or any part, of the services required by this Agreement. Upon receipt of such an order Knight shall immediately comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the services covered by the order. Client, however, shall pay all costs associated with the suspension.

15. Termination. This Agreement may be terminated by either party upon thirty (30) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. This Agreement may be terminated by Client, under the same terms, whenever Client shall determine that termination is in its best interests. In the event of termination, Knight shall be compensated by Client for all Services performed up to and including the termination date, including reimbursable expenses, and/or the completion of such Services and records as are necessary to place Knight's files in order and/or protect its professional reputation. In the event of bankruptcy or insolvency of Client or if the financial condition of Client at any times does not, in the judgment of Knight, justify continuance of the work, Knight shall be entitled to cancel this contract and receive reimbursement for its reasonable and proper cancellation charges.

16. Force Majeure. Neither party to this agreement will be liable to the other party for delays in performing the services, or for direct or indirect cost resulting from such delays, that may result from Acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure.

17. Asbestos/Hazardous Materials Disclaimer. Client is hereby notified that asbestos is prevalent in building constructed prior to 1978. Client agrees to defend, indemnify and hold harmless Knight from any and all asbestos, pollution, and/or hazardous waste-related claims arising against Knight relative to the presence, detection, removal or disposal of asbestos and or other hazardous wastes at the Project site.

18. "ADA" Compliance. For Projects of new construction, Knight shall endeavor to design the Project in conformity with the Americans with Disabilities Act ("ADA") Accessibility Guidelines, 28 CFR Part 36 (July 26, 1991) (hereinafter the "Act") and advise Client if any accommodation is structurally impractical. For modifications to an existing facility of any type, Knight shall endeavor to identify existing barriers and needed accommodations as those terms are used in the Act, and inform Client of the existence of these

barriers and needed accommodations. It is the Client's sole responsibility to determine whether to exclude a specific accommodation because the accommodation is not readily achievable or unduly burdensome. Knight shall not be responsible to determine whether it is necessary to remove all barriers identified in order to comply with the Act. Such determination shall be made by Client.

19. Compliance with Codes. Knight's design shall conform to local applicable codes in effect, and as interpreted by building official, at the time the design is prepared; however, Knight shall not be responsible for changes to the Project resulting from changes in local or applicable codes or changes in interpretation thereof by authorities having jurisdiction.

20. Applicable Law. The rights and obligations of the parties under this contract shall be interpreted in accordance with and governed in all respects by the State of Illinois.