BILL LUSK
Mayor

PHILLIP A. NOBLETT
Town Attorney

HONNA K. ROGERS
Town Manager

Town of Signal Mountain

1111 RIDGEWAY AVENUE
SIGNAL MOUNTAIN, TENNESSEE 37377
423-886-2177

SUSAN ROBERTSON
Vice Mayor

PAUL M. HENDRICKS
Councilmember

HERSHEL DICK
Councilmember

ANNETTE ALLEN
Councilmember

REGULAR MONTHLY MEETING OF SIGNAL MOUNTAIN TOWN COUNCIL, MONDAY, March 15, 2010 TOWN HALL, 6:30 P.M.

AGENDA

1. Pledge
2. Prayer
3. Roll Call
4. Approval of minutes:
   a. Regular Meeting February 08, 2010
   b. Agenda Meeting February 22, 2010

5. Honorary Resolutions
   a. Recognizing and Commending the Signal Mountain Chess Club

6. Citizens Opportunity to Address Council (Three minute time limit)

7. Resolutions
   a. Authorizing the Town Manager to enter into a contract with Orange Grove
   b. Authorizing the Town Manager to enter into a contract with Arcadis Engineering
   c. Authorizing the Town Manager to enter into a contract with Franklin Architects

8. Discussions
   a. Other items of business

9. Other Business

10. Adjourn

RESOLUTION NO. _____

A RESOLUTION RECOGNIZING AND COMMENDING
THE SIGNAL MOUNTAIN CHESS CLUB

WHEREAS, the United States Chess Federation, located in Crossville, Tennessee, has a very active chess regional and state organization, which sponsors two scholastic tournaments a year for both individual players and team players; and,

WHEREAS, in 2004, at the request of Jean Trohanis, principal of Thrasher Elementary School, Bill Cheal created a chess club that developed into a thriving extra-curricular activity for Thrasher students; and,

WHEREAS, four years later, chess club member Sam Harrelson's grandfather, Dr. Jim Dodd, became so impressed by the creative thinking skills his grandson was learning by playing chess at Thrasher that he decided to join Mr. Cheal and help out; and,

WHEREAS, eventually Jamie Brock, a teacher at the old Signal Mountain Middle School, and Ken Barker, principal of Nolan Elementary, requested Mr. Cheal and Dr. Dodd create chess clubs for their students; and,

WHEREAS, club members who began playing chess six years ago are now students at Signal Mountain Middle High, the Chess Club is active in all of Signal Mountain's schools, and,

WHEREAS, on January 12th this year the first Signal Mountain Inter-Scholastic Chess Tournament occurred between Thrasher and Nolan, supervised by SMMHS players; and,

WHEREAS, at the regional tournament on January 17th, out of 64 players Brock Herring placed 18th and his brother Ian placed 31st in the individual event, and in the team event Sam Wickhizer, Hunter Martin, David Holder and Hudson Burke finished in the top 4, which qualified them to participate in the March 27th Tennessee state tournament in Cookeville; and,

WHEREAS, because of the ever-expanding success of the Chess Club, it is creating a non-profit entity, the Signal Mountain Foundation of Scholastic Chess, to support its mission to attract and encourage not just students, but everyone to play chess not only for the critical thinking skills it develops, but for just plain fun too;

NOW, THEREFORE, BE IT RESOLVED that the Town Council of Signal Mountain, Tennessee recognizes and commends Bill Cheal, Dr. Jim Dodd, and the Signal Mountain Chess Club for their extraordinary success over the years and encourages all citizens of the mountain to drop-in at the Signal Mountain Library on Monday nights from 6-7:30 to play a game of chess.

_____	_____
MAYOR	RECORDER
_____	_____
DATE	DATE

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO ENTER INTO A LETTER OF UNDERSTANDING WITH ORANGE GROVE CENTER FOR A THREE YEAR TERM BEGINNING MARCH 16, 2010 TO PROVIDE CONTRACT WORKERS TO OPERATE THE SIGNAL MOUNTAIN DROP-OFF CENTER FOR TOTAL MONTHLY COSTS OF $3,676.00 WHICH SHALL NOT EXCEED $44,112.00 PER YEAR.

BE IT RESOLVED by the Town Council of the Town of Signal Mountain, Tennessee that the Town Manager is authorized to enter into a Letter of Understanding with Orange Grove Center for a three (3) year term beginning March 16, 2010 to provide contract workers to operate the Signal Mountain Drop-Off Center for total monthly costs of $3,676.00, which shall not exceed $44,112.00. A copy of the Letter of Understanding for the Enclave Program between Signal Mountain and Orange Grove Center is attached.

_____ _____

MAYOR RECORDER

_____ _____

DATE DATE

Letter of Understanding for Enclave Program between Signal Mountain and Orange Grove Center

This agreement of services is entered into on March 16, 2010 for a three year term, by and between Signal Mountain Drop-Off Center and Orange Grove Center.

1. PURPOSE

Orange Grove Center will provide Signal Mountain workers to operate the Signal Mountain Recycling Drop-off Center. An Orange Grove Supervisor/Trainer will be onsite with our workers at all times. Services include keeping the grounds neat and clean, meeting and greeting the public as they recycle, assisting customers with their recycling, and working to ensure products are accurately segregated. These services will be provided Tuesday 9:00 a.m. – 6:00 p.m., Wednesday through Friday 11:00 a.m. – 6:00 p.m., and Saturday 8:00 a.m. – 6:00 p.m. Schedule excludes the holidays of July 4th, Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day. Signal Mountain will continue to be responsible for the hauling of the collected products to the processing plants. This agreement is for the operating labor at the Drop-Off Center.

2. COMPENSATION

Orange Grove Center will send Signal Mountain a monthly invoice for services provided. Cost of services will be $3,676/month. Payment to Orange Grove Center will be due by the 15th of each month following services.

3. INSURANCE

Orange Grove Center maintains worker's compensation insurance on its employees and clients and will submit verification of liability insurance to Signal Mountain on request.

4 CANCELLATION

Signal Mountain or Orange Grove Center can amend this agreement at anytime with signature from both parties. This agreement may also be canceled with 30 days written notice or immediately if either party fails to meet the agreed upon standards.

SIGNAL MOUNTAIN	ORANGE GROVE CENTER
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO SIGN A CONTRACT WITH ARCADIS IN AN AMOUNT NOT TO EXCEED NINETEEN THOUSAND AND 0/100 ($19,000) DOLLARS FOR PROFESSIONAL ENGINEERING SERVICES CONCERNING A WATER DISTRIBUTION SYSTEM MODEL EVALUATION FOR THE TOWN OF SIGNAL MOUNTAIN.

WHEREAS, proposals for professional engineering services have been received by the Town for a Water Distribution System Model Evaluation for the Town of Signal Mountain and interviews for such proposals were held by a panel; and

WHEREAS, the panel selected Arcadis Engineering as the most qualified firm to provide engineering services for the job; and

WHEREAS, Arcadis Engineering has agreed to perform professional engineering services concerning a Water Distribution System Model Evaluation for the Town in an amount not to exceed $19,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, That the Town Manager is authorized to enter into a contract with Arcadis Engineering to perform professional engineering services and recommend water system improvements concerning a Water Distribution System Model Evaluation for the Town in an amount not to exceed $19,000.00.

_____	_____
MAYOR	RECORDER
_____	_____
DATE	DATE

DRAFT

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into and made effective as of this 12th day of March, 2010 (the "Effective Date").

1. PARTIES (individually a "Party" and collectively the "Parties")

CLIENT	ARCADIS
Name: Town of Signal Mountain (the "Client") Address 1: 1111 Ridgeway Avenue Address 2: _____ City: Signal Mountain State: TN Zip: 37377	Name: ARCADIS U.S., Inc. ("ARCADIS") Address 1: 1210 Premier Drive, Suite 200 Address 2: _____ City: Chattanooga State: TN Zip: 37421 **The parties hereto acknowledge and agree that when individual work authorizations are necessary hereunder, all such work authorizations will be issued and executed by the appropriate ARCADIS entity authorized and licensed to perform work in the respective state, country or province where the work is being performed.**

2. PARTY REPRESENTATIVES

CLIENT REPRESENTATIVE	ARCADIS REPRESENTATIVE
Mail Originals: Town of Signal Mountain 1111 Ridgeway Avenue Signal Mountain, TN 37377 Attention: Honna Rogers Telephone: 423.886.2177 Fax: 423.886.2939	**Mail Originals:** **ARCADIS** 1210 Premier Drive, Suite 200 Chattanooga, TN 37421 Attention: David Bible, PE Telephone: 423.756.7193 Fax: 423.756.7197
With Copies To: _____ _____ _____ Attention: _____ Telephone No.: _____ Facsimile No.: _____	**With Copies To:** _____ _____ _____ Attention: _____ Telephone No.: _____ Facsimile No.: _____

3. GENERAL TYPES OF SERVICES TO BE PERFORMED	4. SPECIAL TYPES OF SERVICES TO BE PERFORMED
Check each appropriate box: ☐ Environmental ☒ Infrastructure ☐ Other: _____ Services performed under this Agreement are detailed in the Scope of Services and may also be detailed in Work Authorizations approved by the Client and ARCADIS in the form attached hereto as Exhibit E.	Check each appropriate box: ☐ Field ☐ Phase I ESA ☐ Asbestos & Other Hazardous Materials ☐ PM / CM ☐ Other or Not Applicable

5. AGREEMENT

The following documents, as applicable, are attached and are incorporated into this Agreement:

- Exhibit A: General Scope of Services
- Exhibit B: Payment Terms
- Exhibit C: General Terms and Conditions for Professional Services
- Exhibit E: Work Authorization

6. EXECUTION

In witness hereof, and in consideration of the promises and covenants set forth herein, and for other good and valuable consideration, the receipt, adequacy, and legal sufficiency of which are hereby acknowledged, the Parties have caused this Agreement to be executed on the day and year first set forth above.

CLIENT	ARCADIS
By:	By: 3-12-2010
Name:	Name: Robert C. Borneman, PE, BCEE
Title:	Title: Vice President

For review by Phil.

EXHIBIT A
GENERAL SCOPE OF SERVICES

1. SERVICES TO BE PERFORMED

ARCADIS shall perform the professional Consulting Services required under this Agreement in accordance with standard of care, skill, training, diligence and judgment normally provided by competent professionals who perform work of a similar nature, in the same geographical regions as the work described in this Agreement and any Work Authorization. No other warranty or guarantee is expressed or implied, and no other provision of this Agreement will impose any liability upon ARCADIS in excess of this standard of care.

Services performed under this Agreement may be more fully described in specific detail in individual Work Authorizations approved by the Client and ARCADIS in the form attached hereto as Exhibit E, which shall constitute a part of this Agreement.

ARCADIS shall have no obligation to commence the Services as stipulated in this Agreement and/or any associated Work Authorization until both this Agreement and the applicable Work Authorization are fully executed and delivered to ARCADIS. Any schedule requirements applicable to ARCADIS Services will be set forth in this Exhibit or Work Authorization.

ARCADIS agrees to correct, at its own expense, any Service provided under this Agreement that does not conform to the standard of care herein for a period of one (1) year following the completion of that Service.

2. DESCRIPTION OF GENERAL SERVICES

ARCADIS will perform general engineering consulting services for the Town of Signal Mountain as described in the subsequent Work Authorizations.

EXHIBIT B
PAYMENT TERMS

1. PAYMENT OF SERVICES

Client agrees to pay for the Services performed by ARCADIS in accordance with this Agreement and any approved Work Authorization. Payment for Services is set forth and shall be subject to the ARCADIS standard invoicing practices, which are incorporated herein. Payment Terms shall specify any required Mobilization Fee or other Retainer, Lump Sum Fees, Hourly Billing Rates, and Reimbursable Expenses, and provide for interest on payments not timely made, and for the suspension of work and attorneys' fees in the event that payments are not made by the Client.

2. PAYMENT TERMS

ARCADIS shall invoice the Client for Services in accordance with ARCADIS standard invoicing practices. ARCADIS reserves the right, in its sole discretion, to invoice the Client in advance and/or bi-weekly. Invoices are due and payable on receipt and should be remitted by check or wire transfer of immediately available funds as follows:

WELLS FARGO BANK NA

Lockbox: ARCADIS U.S., Inc., Dept 547, Denver, Colorado 80291-0547.

By Wire: ABA 121000248, Account No. 1018164751, ARCADIS U.S., Inc. Lockbox.

By ACH: ABA 102000076, Account No. 1018164751, ARCADIS U.S., Inc. Lockbox.

If Client fails to make any payment due ARCADIS for services and expenses within thirty (30) days after receipt of invoice, the amounts due ARCADIS will be increased at the rate of 1.5% per month, or the maximum rate of interest permitted by law for accounts not paid within thirty (30) days.

If Client reasonably objects to any portion of an invoice, the Client shall provide written notification to ARCADIS of Client's objection and the basis for such objection within fifteen (15) days of the date of receipt of the invoice, and the Parties immediately shall make every effort to settle the *disputed* portion of the invoice. Client shall waive any objections to ARCADIS invoice if it fails to timely provide such written notice to ARCADIS. The *undisputed* portion shall be paid immediately and Client shall not offset amounts due ARCADIS under a Work Authorization for any credit or disputes arising under a different Work Authorization. If payment of *undisputed* invoices by Client is not maintained on a current basis, ARCADIS may, after giving seven (7) days' written notice to Client, suspend further performance until such payment is restored to a current basis. All suspensions shall extend the time for performance by a length of time equal to the duration of the suspension, and ARCADIS shall be paid for Services performed and charges incurred prior to the suspension date, plus suspension charges. Suspension charges shall include, without limitation, putting of documents and analyses in order, personnel and equipment rescheduling or reassignment adjustments, additional insurance/bonding coverage, extended overhead and costs, and all other related costs and charges incurred and attributable to suspension.

In the event of litigation or other proceeding to enforce performance of this Agreement or any payment obligation under this Agreement, the prevailing Party shall be entitled to recover from the other Party attorneys' fees and costs as may be reasonably incurred by reason of the litigation.

EXHIBIT C
GENERAL TERMS AND CONDITIONS
FOR INFRASTRUCTURE SERVICES

1. TERM OF AGREEMENT

1.1 This Agreement shall remain in effect until terminated in accordance with the specifications noted in Section 3, herein.

2. CHANGES IN THE WORK

2.1 At any time after execution of this Agreement, Client may request changes in ARCADIS Services consisting of additions, deletions, and revisions within the general scope of services being performed by ARCADIS under this Agreement and/or any applicable Work Authorizations. Whenever a change in the scope and/or time for performance of services occurs, or if Client has notified ARCADIS of a change, ARCADIS shall submit to Client within a reasonable time a written estimate of the changes in cost and/or schedule, with supporting calculations and pricing. Pricing shall be in accordance with the pricing structure of this Agreement.

2.2 Notwithstanding the above, Client may direct ARCADIS in writing to perform the change prior to approval of price and schedule adjustments by Client. If so directed, ARCADIS shall not suspend performance of this Agreement during the review and negotiation of such change, as long as the change is a reasonably foreseeable alteration of the Services originally contemplated. In the event Client and ARCADIS are unable to reach agreement regarding changes in price and/or time associated with a change order, the matter shall be submitted to mediation as provided in Paragraph 13 of this Agreement.

3. TERMINATION OF AGREEMENT

3.1 Termination for Convenience - Either Party may terminate this Agreement and any associated Work Authorizations for its convenience after giving five (5) days' written notice to the other Party. However, ARCADIS shall not have the right to terminate this Agreement, without cause, prior to completion by ARCADIS of all Services required under the Agreement or any outstanding Work Authorizations. In the event Client terminates ARCADIS services without cause and/or for Client's convenience, Client shall be liable to promptly pay ARCADIS for all work performed through the date of termination, all of ARCADIS expenses directly attributable to the termination, including fair and reasonable sums for overhead and profit for work performed, and all costs incurred by ARCADIS in terminating any contracts entered into in connection with the performance of its Services.

3.2 **Termination for Cause** – Either Party may terminate this Agreement for Cause. Termination for cause shall be by written "Termination Notice" from the terminating Party, delivered to the defaulting Party. The defaulting Party shall have thirty (30) days from receipt of the Termination Notice within which to cure the alleged default, or if the cure requires a period of time in excess of thirty (30) days the cure period shall be extended by mutual agreement so long as the defaulting Party has undertaken such reasonably diligent efforts to cure such default. Any termination for cause shall be without prejudice to any claims that either Party may have against the other Party, its agents or subcontractors.

4. CONFLICT OF INTEREST

4.1 ARCADIS shall not perform, or enter into any agreement for, services for any other person, corporation or entity, except with prior written consent of Client, if, in the sole discretion of ARCADIS, the performance of the services could result in a conflict with ARCADIS obligations under this Agreement. ARCADIS represents that it has reasonably evaluated potential conflicts and has disclosed to Client in writing any prior or existing relationships which present, or could appear to present, a conflict with the Services to be performed.

5. USE OF DOCUMENTS

5.1 All documents provided by ARCADIS pursuant to this Agreement are instruments of service of ARCADIS, and ARCADIS shall retain an ownership and property interest therein

(including the right of reuse) until Client has made full payment to ARCADIS for such documents pursuant to this Agreement. All documents generated by ARCADIS pursuant to this Agreement are not intended or represented to be suitable for reuse by Client or others on any other project, or other purposes other than that for which the same were created. Client agrees not to reuse said reports or materials on any other project, or for any other purpose other than that for which they were created, without the prior written consent of ARCADIS. Reuse of said reports or other material by Client for any other purpose or on other projects without written permission or adaptation by ARCADIS for the specific purposed then intended shall be at the Client's and user's sole risk, without any liability whatsoever to ARCADIS, and Client agrees to indemnify and hold harmless ARCADIS from all claims, damages and expenses, including attorneys' fees, arising out of such unauthorized reuse by Client.

5.2 The Parties agree that reports prepared by or on behalf of ARCADIS pertaining to site conditions, including but not limited to geotechnical engineering or geologic reports (hereinafter collectively "Site Condition Reports"), are prepared for the exclusive use of the Client and its authorized agents, and that no other party may rely on Site Condition Reports unless ARCADIS agrees in advance to such reliance in writing. Site Condition Reports are not intended for use by others, and the information contained therein is not applicable to other sites, projects or for any purpose except the one originally contemplated in the Services. The Client acknowledges that the Site Condition Reports are based on conditions that exist at the time a study is performed and that the findings and conclusions of the Site Condition Reports may be affected by the passage of time, by manmade events such as construction on or adjacent to the site, or by natural events such as floods, earthquakes, slope instability or groundwater fluctuations, among others. The Parties agree that interpretations of subsurface conditions by ARCADIS or its subcontractors may be based on limited field observations including, without limitation, from widely spaced sampling locations at the Site. The Client acknowledges that site exploration by ARCADIS or its subcontractors will only identify subsurface conditions at those points where subsurface tests are conducted or samples are taken. The Parties agree that ARCADIS or its subcontractors may review field and laboratory data and then apply professional judgment to render an opinion about subsurface conditions at the Site and that the actual subsurface conditions may differ, sometimes significantly, from those indicated by ARCADIS or its subcontractors. The Client agrees that any report, conclusions or interpretations will not be construed as a warranty of the subsurface conditions by ARCADIS or its subcontractors. The Parties further agree that no warranty or representation, express or implied, is included or intended in any reports, conclusions, or interpretations prepared by or on behalf of ARCADIS pertaining to site conditions.

6. RECORD RETENTION

6.1 Any and all files, data, records, reports and other information or work product generated in connection with or related to ARCADIS Services, shall be retained and stored by ARCADIS in hard copy and/or electronic form for a period of ten (10) years from the completion of Services or such other period as specified by the client. If Client decides to retain said records, it must notify ARCADIS no later than thirty (30) days prior to the expiration of the period. Any additional expense of retaining documents or transfer of documents to Client at the end of such ten (10) year period will be at Client's expense. Provided however, that this provision shall not apply to drafts of plans, specifications, drawings or reports that shall be destroyed immediately upon being superseded in the project.

7. PROPRIETARY RIGHTS OF ARCADIS

7.1 Client acknowledges that ARCADIS has developed proprietary systems, processes, apparatus, analytical tools and methods which ARCADIS uses in its business. Such systems, processes, apparatus, analytical tools and methods, including software, patents, copyrights and other intellectual property, and all derivations, enhancements or modifications thereof made by ARCADIS, including those made as a result of work performed by ARCADIS for Client hereunder ("Intellectual Property"), shall be and shall remain the property of ARCADIS. This Agreement does not confer any grant of a license to any such ARCADIS Intellectual Property, nor any right of use by the Client independently or by other Client contractors.

8. INDEMNIFICATION

8.1 ARCADIS shall indemnify, defend and hold harmless Client, its directors, officers, employees, shareholders and affiliates from and against any and all liabilities, losses, damages, costs and expenses (including attorneys' fees and court costs) which Client and its directors, officers, employees and agents hereafter may suffer in connection with any claim, demand, action or right of action (whether at law or in equity) brought or asserted by any third party because of any personal injury (including death) or property damage to the extent caused as a result of negligent acts, errors, omissions, or willful misconduct on the part of ARCADIS. ARCADIS shall not be liable to the extent that any liability, loss, damage, costs, and expense results from an act or omission, negligence or willful misconduct by Client or its directors, officers, employees or agents, or by any other person or entity not acting on ARCADIS' behalf or under ARCADIS' right of direction or control.

8.2 The Parties shall at all times remain entirely responsible for the results and consequences of their own negligence and agree to indemnify and hold harmless the other Party from and against any and all claims, losses, damages, costs and expenses, including attorneys' fees, which may arise or result from such Party's negligence.

8.3 The Client agrees that it will obtain indemnification of ARCADIS from any contractors hired or retained by Client for claims arising from or related to the contractor's acts or omissions in performing any work that is the subject matter of this Agreement and any Work Authorizations.

9. LIMITATION OF LIABILITY

9.1 The Parties recognize the risks associated with the Services, that ARCADIS has not and cannot reasonably calculate the cost of unlimited liability in its cost proposal, and in consideration of the mutual benefits received by both parties, have agreed to the limitations noted herein. Therefore, to the fullest extent permitted by law, the total liability, in the aggregate of ARCADIS and its directors, officers, employees, agents, associates or subcontractors, and any of them, to Client or anyone claiming by, under or through the Client, for any and all injuries, claims, losses, expenses, including attorneys' fees, expert fees, or court costs and damages whatsoever arising out of or in any way related to ARCADIS Services under this Agreement, from any cause or causes whatsoever, including but not limited to, negligent acts or omissions, professional negligence, breach of contract, strict liability, errors or omissions of ARCADIS, or the employees, directors, officers, agents, associates of subcontractors of ARCADIS, or any of them, will be limited to the total amount of fees paid to ARCADIS under this Agreement. In no event, however, shall any such liability exceed the amount of applicable insurance that ARCADIS has agreed to procure and maintain under this Agreement.

9.2 The Client and ARCADIS waive incidental, indirect, or consequential damages, loss revenues or profits from claims, disputes or other matters in question arising out of or relating to this Agreement, whether such claims arise from negligence, breach of contract, or strict liability. This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination.

10. INSURANCE

10.1 ARCADIS shall maintain for the term of this Agreement insurance policies covering:

- Worker's Compensation and Employer's Liability insurance, statutory limits.
- Comprehensive General Liability insurance, a total of $1,000,000 each occurrence and $2,000,000 in aggregate.
- Comprehensive Automobile Liability insurance, a total of $1,000,000 each occurrence and $2,000,000 in aggregate.
- Professional errors and omissions insurance with a per claim limit of not less than $3,000,000

11. CONFIDENTIALITY

11.1 In order to protect the Client's confidential and propriety commercial and financial information, any documents records, data or communications provided by Client or produced by ARCADIS for Client shall be treated as confidential. Such information shall not be disclosed to any third party, unless necessary to perform the Services. Information will not be considered confidential if: (i) the information is required to be disclosed as a part of the Services, hereunder; (ii) information is in the public domain through no

action of ARCADIS in breach of the Agreement; (iii) information is independently developed by ARCADIS; (iv) the information is acquired by ARCADIS from a third party not delivered to ARCADIS in breach of any known confidentiality agreements; or (v) disclosure is required by law, court order or subpoena. In the event ARCADIS believes that it is required by law to reveal or disclose any information, prior to disclosure or production ARCADIS shall first notify Client in writing.

12. NOTICES

12.1 All notices shall be either: (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. Mail; (ii) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered one business day after deposit with such courier; or (iii) sent by personal delivery. Addresses may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

13. MEDIATION

13.1 If any dispute arises out of or relates to this Agreement, or the breach thereof, and the dispute cannot be settled through direct discussions by the representatives of the Parties, the Parties agree then to submit the matter to mediation under the Construction Industry Mediation Rules of the American Arbitration Association before having recourse to a judicial forum. No written or oral representation made during the course of any settlement negotiations or mediation shall be deemed a party admission.

14. CONSTRUCTION COST ESTIMATES

14.1 The Client shall advise ARCADIS in writing before design commencement of any budgetary limitations for the overall cost of construction. ARCADIS will endeavor to work within such limitations and will, if requested and included within the scope of services, submit to Client an opinion of probable construction cost. Opinions of probable construction cost will represent ARCADIS' reasonable judgment as a design professional familiar with the construction industry, but does not represent that bids or negotiated prices will not vary from budgets or opinions of probable cost. Client acknowledges that neither ARCADIS nor Client has control over the cost of labor, materials or methods by which contractors determine prices for construction.

15. PLAN INFORMATION

15.1 If the scope of services provide for the preparation of plans or drawings by ARCADIS, ARCADIS makes no representations that all existing utilities are shown or that any utilities shown thereon are accurately depicted.

16. GENERAL PROVISIONS

16.1 **Entire Agreement** - This Agreement constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior negotiations, representations or agreements relating thereto, written or oral, except to the extent they are expressly incorporated herein. Unless otherwise provided for herein, no amendments, changes, alterations or modifications of this Agreement shall be effective unless in writing, executed by Client and ARCADIS.

16.2 **No Third Party Beneficiaries** - The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Client and ARCADIS, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the Client and ARCADIS that sub consultants and any other person other than the Client or ARCADIS receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

16.3 **Force Majeure** –Neither Party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by forces beyond its reasonable control, including without limitation, strikes, lockouts, or other industrial disturbances, acts or omissions of subcontractors, compliance with any regulations, civil disturbances, fires, floods, earthquakes, acts of God, acts of a public enemy or terrorism, epidemics or pandemics.

16.4 **Severability and Waiver** – If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other Party any term or provision of this Agreement shall be deemed not to be a waiver of such Party's right to enforce against the other party the same or any other such term or provision.

16.5 **Governing Law** – The laws of the State in which the Project is located shall govern this Agreement and the legal relations of the Parties.

16.6 **Compliance with Law** – ARCADIS and Client will use reasonable care to comply with applicable laws in effect at the time the Services are performed hereunder, which to the best of their knowledge, information and belief; apply to their respective obligations under this Agreement. Client shall cooperate with ARCADIS in obtaining any permits or licenses required for the performance of the Services.

16.7 **Delegation and Assignment** – Party may at any time delegate, orally or in writing, this Agreement, or any portion thereof, with the prior written consent of the other Party. No such delegation shall operate to relieve the Party of its responsibilities hereunder.

16.8 **Headings** – Headings of particular paragraphs are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation of the scope of the paragraphs to which they refer.

17. ACCESS TO PREMISES

17.1 During the term of this Agreement, Client shall grant to or cause to be made available to ARCADIS reasonable and necessary nonexclusive access to any location as necessary for purpose of allowing ARCADIS to perform the Services and fulfill its obligations under this Agreement. Client shall immediately notify ARCADIS if Client is unable to obtain necessary access within a timely manner. Should ARCADIS be obstructed or delayed in the commencement, performance or completion of the Work, without fault on its part, by reason of not having full access to the location, and then ARCADIS will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

18. SITE CONDITIONS

18.1 ARCADIS shall not be liable for: (i) damage or injury to any subterranean structures (including, but not limited to, utilities, mains, pipes, tanks, and telephone cables) or any existing subterranean conditions; or the consequences of such damage or injury, if (with respect to this clause) (i) such structures or conditions were unknown and were not identified or shown, or were incorrectly shown, in information or on plans furnished to or obtained by ARCADIS in connection with the Services; (ii) concealed conditions encountered in the performance of the Services; (iii) concealed or unknown conditions in an existing structure at variance with the conditions indicated by the Scope of Services or Work Authorization; or (iv) unknown physical conditions below the surface of the ground that differ materially from those ordinarily encountered and are generally recognized as inherent in work of the character provided under this Agreement.

18.2 Client shall provide to ARCADIS all plans, maps, drawing and other documents identifying the location of any subterranean structures on the Site. Prior to location of any drilling or excavation below the ground surface, ARCADIS shall obtain the concurrence of the Client as to the location for such drilling or excavation. Should: (i) concealed conditions be encountered in the performance of the Services; (ii) concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Scope of Services or Work Authorization; or (iii) unknown physical conditions below the ground differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided under this Agreement; then the amount of this Agreement and/or time for performance shall be equitably adjusted by change order upon claim by either Party made within twenty (20) days after the first observance of the conditions

EXHIBIT E
WORK AUTHORIZATION
NO. 1

This Work Authorization is entered into by and between ARCADIS U.S., Inc., a Delaware corporation ("ARCADIS") and Town of Signal Mountain, Tennessee ("Client"). This Work Authorization incorporates by reference the Professional Service Agreement entered into by the Parties dated March 12, 2010 (the "Services Agreement"). The Services Agreement is hereby amended and supplemented as follows:

I. GENERAL DESCRIPTION OF BASIC SERVICES

1.1 Client hereby authorizes ARCADIS to perform the following general scope of Basic Services:

ARCADIS will perform the following tasks in evaluating the Town of Signal Mountain's water distribution system.

Existing System Evaluation

1. Meet with the Town to kick off the project, confirm the scope, project, approach, scheduling and identify key contact persons, etc.

2. Gather all existing information available concerning the mapping of the distribution system, including: GIS piping database, elevations from Hamilton County GIS-based contour data; pump and tank sizes, capacities, and flow and level charts; and any other pertinent information such as types of piping and years installed for mains in the distribution system. The data utilized to develop the original system will be relied on where possible.

3. Conduct a review of records of water purchased from Tennessee-American Water Company. A list of the larger water consumption customers will be provided to permit high accuracy of spatially allocating the demands across the water distribution system.

4. Review hydrant flow test and pressure readings. Utilizing this data, calibrate the preliminary model to reasonably reflect and simulate the water distribution system's condition. No additional field testing of the water distribution system flows are anticipated.

5. Confirm system peaking factors, fire flow requirements in accordance with local community standards, and apply various flow conditions and fire flow simulations to the model to identify potential system deficiencies.

6. Summarize problem areas through simulation of existing WDS and analyze the system to determine required system improvements for distribution and storage.

7. Model recommendations, approximate 5 to 10, for system improvements (to address identified deficiencies) showing residual pressure and fire flow contours.

Engineering Report

1. Based upon the model of the existing WDS, prepare an engineering report that outlines system deficiencies and recommends key improvements.

2. Develop a preliminary opinion of probable construction cost in current dollars for the recommended improvements.

3. Evaluate impacts of possible connections with other municipal systems.

4. Review the report with the Town, address comments and finalize report within 30 days after receipt of draft report comments. Furnish the Town with five copies of the final engineering report.

2. COMPENSATION FOR SERVICES

2.1 Direct Labor Cost Times a Factor Method:

2.1.1 Client shall pay ARCADIS for Basic Services on a cost-plus basis as follows:

Cost-plus services shall be reimbursed at salary cost plus one hundred ten percent (110%) of salary cost plus direct non-salary expenses billed at cost plus ten percent (10%).

Salary costs shall be defined as salaries and wages paid to all ARCADIS personnel engaged directly on the project, including but not limited to, engineers, architects, surveyors, designers, drafters, specifications writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits, including but not limited to social security, unemployment, and other payroll taxes; health and retirement benefits; sick leave; vacation and holiday pay; and other group benefits. Direct non-salary expenses include subcontract, computer and CADD services charges, communications, field supplies, reproduction, and other project-related expenses.

2.1.2 The not-to-exceed amount that will become payable for Basic Services under this Work Authorization is $19,000.

3. SCHEDULE FOR SERVICES

ARCADIS shall perform the Basic Services described above within 60 days of the Notice to Proceed.

CLIENT	ARCADIS
By:	By:
	Robert C. Borneman, PE, BCEE
Title:	Title: Vice President
Date:	Date: March 12, 2010

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO SIGN A CONTRACT WITH FRANKLIN ARCHITECTS IN AN AMOUNT NOT TO EXCEED FIFTEEN THOUSAND SEVEN HUNDRED FIFTY AND 0/100 ($15,750) DOLLARS TO PROVIDE PROFESSIONAL ARCHITECTURAL SERVICES FOR BID PACKET PREPARATION CONCERNING A NEW ROOF AND CEILING REPAIRS AT THE MOUNTAIN ARTS COMMUNITY CENTER FOR THE TOWN OF SIGNAL MOUNTAIN.

WHEREAS, several proposals have been received by the Town to provide professional architectural services for bid packet preparation concerning a new roof and ceiling repairs at the Mountain Arts Community Center for the Town of Signal Mountain and interviews were held by a panel;

WHEREAS, the panel chosen to consider these proposals selected Franklin Architects as the most qualified firm for the job; and

WHEREAS, Franklin Architects has agreed to perform professional architectural services for bid packet preparation concerning a new roof and ceiling repairs at the Mountain Arts Community Center in an amount not to exceed $15,750.00.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SIGNAL MOUNTAIN, TENNESSEE, That the Town Manager is authorized to enter into a contract with Franklin Architects to perform professional architectural services for bid packet preparation concerning a new roof and ceiling repairs at the Mountain Arts Community Center in an amount not to exceed $15,750.00.

MAYOR	RECORDER
DATE	DATE

DRAFT

AIA® Document B101™ – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fifteenth day of March in the year Two Thousand Ten
(In words, indicate day, month and year.)

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

Town of Signal Mountain, TN
Signal Mountain Town Hall
1111 Ridgeway Avenue
Signal Mountain, TN 37377

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

Franklin Associates, Architects, Inc
142 North Market Street
Chattanooga, TN 37405

FAAI Project No. 6459

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

Mountain Arts Community Center
809 Kentucky Avenue
Signal Mountain, TN 37377

The project includes the reroofing of the Mountain Arts Community Center on Signal Mountain. The area of roofing is approximately 24,000-27,000 sf. The existing roofs are asphalt shingles, slate shingles, EPDM roofing and associated metal flashings. Under the EPDM membrane roofs, existing cold tar pitch or asphalt built up roofs remain that may need to be removed prior to installing a new membrane roofs. Work related with the re-roofing includes repair and replacement of eave and fascia materials, installation of new gutters, replacement of some roof decking, replacement of some structural members in the attic space.

In addition to the reroofing project, there are some plaster ceilings that are collapsing and some that appear to be secure and stable. The scope of the work will include the demolition of some or all of the plaster ceilings and the reinstallation of new gypsum board ceilings. For those ceilings remaining, the scope includes observing the existing ceilings and making recommendations to the Owner as to methods of additional attachments and support.

The Owner has an approximate budget of $300,000 for this scope of work.
The Architects have preliminarily estimated that the re-roofing part of the work will cost approximately $200,000 to $250,000.
The Owner's representative is Ms. Barb Storm.

The Owner and Architect agree as follows.

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

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

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For Phil's Review

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

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

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

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

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:
(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

$1,000,000

.2 Automobile Liability

$1,000,000

.3 Workers' Compensation

$500,000 each occurrence

.4 Professional Liability

$2,000,000

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. Services not set forth in this Article 3 are Additional Services.

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

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 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. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by

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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.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

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

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

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

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

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

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§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

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

§ 3.4.5 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.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 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 either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 procuring the reproduction of Bidding Documents for distribution to prospective bidders;
- .2 distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
- .3 organizing and conducting a pre-bid conference for prospective bidders;

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.4 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

.5 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 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.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

.1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;

.2 organizing and participating in selection interviews with prospective contractors; and

.3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

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

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

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) 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.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor,

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Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and 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.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When 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. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the 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 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the 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.

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

§ 3.6.4 SUBMITTALS

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

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the 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. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the 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

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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.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

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

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall 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.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

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

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.
(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

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Additional Services		Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1	Programming	Owner	
§ 4.1.2	Multiple preliminary designs	Not Provided	
§ 4.1.3	Measured drawings	Architect	
§ 4.1.4	Existing facilities surveys	Architect	
§ 4.1.5	Site Evaluation and Planning (B203™–2007)	N/A	
§ 4.1.6	Building information modeling	N/A	
§ 4.1.7	Civil engineering	N/A	
§ 4.1.8	Landscape design	N/A	
§ 4.1.9	Architectural Interior Design (B252™–2007)	N/A	
§ 4.1.10	Value Analysis (B204™–2007)	N/A	
§ 4.1.11	Detailed cost estimating	N/A	
§ 4.1.12	On-site project representation	N/A	
§ 4.1.13	Conformed construction documents	N/A	
§ 4.1.14	As-Designed Record drawings	N/A	
§ 4.1.15	As-Constructed Record drawings	N/A	
§ 4.1.16	Post occupancy evaluation	N/A	
§ 4.1.17	Facility Support Services (B210™–2007)	N/A	
§ 4.1.18	Tenant-related services	N/A	
§ 4.1.19	Coordination of Owner's consultants	N/A	
§ 4.1.20	Telecommunications/data design	N/A	
§ 4.1.21	Security Evaluation and Planning (B206™–2007)	N/A	
§ 4.1.22	Commissioning (B211™–2007)	N/A	
§ 4.1.23	Extensive environmentally responsible design	N/A	
§ 4.1.24	LEED® Certification (B214™–2007)	N/A	
§ 4.1.25	Fast-track design services	N/A	
§ 4.1.26	Historic Preservation (B205™–2007)	N/A	
§ 4.1.27	Furniture, Furnishings, and Equipment Design (B253™–2007)	N/A	

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

4.2.1 Measured Drawings: The Architect will prepare "as is" drawings based on the Lupton Engineering schematic plans and other architectural drawings as delivered to the Architect by the Owner. The "as-is" drawings will be approximate and suitable for bidding of reroofing and ceiling contracts but will not be field measured exhaustively. These Measured Drawings as described above are included in the "basic services" and will not be billed as additional-services.

4.2.2 Existing Building Surveys: The Architect will visit the site and observe the roof and supporting structure from exterior and interior. The Architect will observe the conditions of the plaster ceilings as well. These site observations will not be exhaustive and will be suitable, in the architects professional opinion, to evaluate and estimate the areas of-roof decking , structure and plaster ceilings to be repaired and replaced. These Existing Building Services as described above are included in the "basic services" and will not be billed as additional services.

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

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

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

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

.3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;

.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;

.7 Preparation for, and attendance at, a public presentation, meeting or hearing;

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

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

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

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

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

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

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or

.6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

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

.1 One (1) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor

.2 Ten (10) visits to the site by the Architect over the duration of the Project during construction

.3 Three (3) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 Three (3) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Twelve (12) 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.

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ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 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 wha 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 or Negotiation Phase 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 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.

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§ 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 the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. 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 A201–2007, General Conditions of the Contract for Construction. 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 9.7.

§ 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 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, 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

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Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[X] 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 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.

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§ 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.

§ 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.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

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 A201–2007, General Conditions of the Contract for Construction.

§ 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, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect

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for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

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

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

Based on the Architect's preliminary estimate of $200,000 and applying the State of Tennessee Fee Schedule to it, the Architects will bill the City of Signal Mountain on an hourly basis with a not to exceed fee of $15,750 for all work up to and including Contract Documents. For services during the Bidding Phase and the Construction Administration Phase, the Architects will bill the City of Signal Mountain on an hourly basis with a not to exceed fee of $5,250. The total hourly not to exceed fee is $21,000 for all services from Programming and Site Investigations through Construction Administration. If the final construction costs exceed the estimated $200,000, the not to exceed limits above will remain unchanged. If the final construction costs are less than $200,000, then the Architect agrees to lower the not to exceed fee in accordance with the State of Tennessee Fee Schedule.

§ 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.)

No additional services identified.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

The Owner will be billed at the employee's base hourly rate with a multiplier of 2.75.

§ 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 one and one-tenth (1.10), 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:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents	Forty	percent (	40	%)

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Phase				
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
Total Basic Compensation	One Hundred	Percent (	100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, 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.)*

Employee or Category		Rate
Principal:	Robert A. Franklin	$135 / hr
Project Manager:	Ted Franklin	$ 83 / hr
Construction Adm:	James Denney	$ 86 / hr
Specifications:	Grant Davis	$ 96 / hr
Structural Engr:	Tommy Ireland	$175 / hr
Drafting:	Dan Trotter	$ 69 / hr

§ 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 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by 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 One and one-tenth (1.10) 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:

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§ 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 Sixty (60) 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.)

The interest rate shall be the Treasury Bill rate on the first day of the month plus 2%.

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be 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:

None

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

.1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect

.2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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

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

OWNER: TOWN OF SIGNAL MOUNTAIN, TN	ARCHITECT: FRANKLIN ASSOCIATES, ARCHITECTS, INC.
(Row deleted)	
(Signature)	*(Signature)*
	Robert A. Franklin, President
(Printed name and title)	*(Printed name and title)*

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