

E-4

May 1, 2014

2014 - - 175

AUTHORIZATION FOR THE LAW DEPARTMENT TO REVIEW AND THE  
SUPERVISOR TO SIGN THE STANDARD OWNER/ARCHITECT AGREEMENT  
FOR HARRISON FIRE DISTRICT #2

On motion of Councilman Malfitano, seconded by Councilwoman Amelio,

it was

RESOLVED to authorize the Law Department to review the Standard Owner/Architect Agreement for the renovations to Harrison Fire District #2.

FURTHER RESOLVED to authorize the Supervisor to sign the Agreement

FURTHER RESOLVED that upon return of Agreement we pay Architect the retainer fee as indicated in article 11 of the Agreement.

FURTHER RESOLVED to forward a copy of this Resolution to the Law Department and the Chief of Fire District #2.

Adopted by the following vote;

AYES: Councilpersons Amelio, Cannella, Malfitano and Sciliano  
Supervisor Belmont

NAYS: None

ABSENT: None



**Peter F. Gaito & Associates** Architects | Engineers | Planners

E-4

**WHITE PLAINS:**  
333 WESTCHESTER AVENUE  
SOUTH BUILDING, SUITE S-303  
WHITE PLAINS, NY 10604  
Phone: 914-682-3381  
Fax: 914-682-4192

**NEW YORK:**  
200 PARK AVENUE SOUTH  
SUITE 916  
NEW YORK, NY 10003  
Phone: 212-714-1250

info@pfga.net  
www.pfga.net

**President**  
Peter F. Gaito  
AIA, NCARB, LEED AP

**Associates**  
Ben Scavone  
AIA, NCARB, LEED AP

Peter F. Gaito Jr.  
AIA, NCARB

Aldo Ricci  
PE

Nick Tucci  
PE, LEED AP

May 2, 2014 (via email & mail)

Assistant Chief William Nardozzi  
Harrison Fire Department  
206 Harrison Avenue  
Harrison, NY 10528

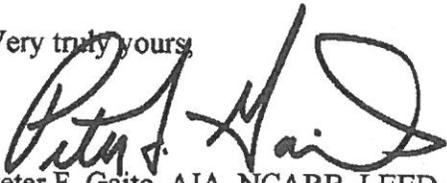
RE: Renovations to Harrison Fire District #2  
206 Harrison Avenue, Harrison, NY  
Harrison PO #340952

Dear Chief Nardozzi:

Based on our recent conversation, attached please find a "Revised" Standard Owner/Architect Agreement for your review and approval.

If acceptable to you, please sign where indicated and return with the indicated retainer fee as indicated in Article 11, upon receipt we will begin work on your project.

Very truly yours,

  
Peter F. Gaito, AIA, NCARB, LEED AP

PFG:jb

Attachment



---

# Standard Form of Agreement Between Owner and Architect

---

## AGREEMENT

made as of the 2nd day of May in the year of Two Thousand and Fourteen.

**BETWEEN** the Owner:  
*(Name and address)*

Town/Village of Harrison  
Harrison Fire District #2  
Municipal Bldg., 1 Heinemen Place  
Harrison, NY 10528

and the Architect:  
*(Name and address)*

Peter F. Gaito & Associates  
333 Westchester Avenue, South Building, Suite S-303  
White Plains, NY 10604

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

Town/Village of Harrison PO# 340952  
Alterations to firehouse at 206 Harrison Avenue, Harrison, NY 10528.

The Owner and Architect agree as set forth below.

# TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

## **ARTICLE 1 ARCHITECT'S RESPONSIBILITIES**

### **1.1 ARCHITECT'S SERVICES**

1.1.1 The Architect's services consist of those services performed by the Architect, Architects employees and Architects consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

## **ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES**

### **2.1 DEFINITION**

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.5 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

### **2.2 SCHEMATIC DESIGN PHASE**

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program and schedule, each in terms of the other, subject to the limitations set forth in subparagraph 5.2.1.

2.2.3 Based on the mutually agreed-upon program, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents describing the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

### **2.3 CONSTRUCTION DOCUMENTS PHASE**

2.3.1 Based on the approved Schematic Design Phase Documents and any further adjustments in the scope or quality of the Project, the Architect shall prepare, for approval by the

Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.3.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.3.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project and will provide signed & sealed documents for governmental-approving agencies.

### **2.4 BIDDING OR NEGOTIATION PHASE**

2.4.1 The Architect, if requested by the Owner, shall assist in obtaining bids or negotiated proposals and in awarding and preparing contracts for construction.

### **2.5 CONSTRUCTION PHASE- ADMINISTRATION OF THE CONSTRUCTION CONTRACT (OPTIONAL)**

2.5.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

2.5.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

2.5.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent shall not be unreasonably withheld.

2.5.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

**2.5.5** The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when completed will be in accordance with the Contract Documents, no more than twice monthly. 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 on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 3.2.)*

**2.5.6** The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for site safety, safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

**2.5.7** The Architect shall at all times have access to the Work.

**2.5.8** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

**2.5.9** Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

**2.5.10** The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.5.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, 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.

**2.5.11** The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional 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, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

**2.5.12** The Architect shall review and approve or take other appropriate action upon 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. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of 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. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**2.5.13** The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an

extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.5.14** The Architect shall conduct site observations to determine the date or dates of Substantial Completion and the date of final completion, shall receive 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 shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

**2.5.16** 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 initial 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 so rendered in good faith.

**2.5.17** The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**2.5.18** The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

**2.5.19** The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.5.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

**2.5.20** It is expressly understood that all services identified in Article 2 of this Agreement are considered basic services, with the exception of Article 2.5 which is optional to the owner service. Any service not delineated in this section shall be deemed as an additional service and the architect shall be compensated in accordance with the hourly rate schedule as set forth in Section 11.3.2. In addition, any services that are deleted from Article 3 will nevertheless be deemed as additional services.

**2.5.21** *If the Architect has not been engaged by the Owner to provide Construction Phase services, the following provisions shall apply: The Design Professional and the Owner agree that because the Design Professional's services shall not include Construction Phase services, the Owner shall be solely*

*responsible for interpreting the Contract Documents and observing the work of the Contractor to discover, correct or mitigate errors, inconsistencies or omissions. If the Owner authorizes deviations, recorded or unrecorded, from the documents prepared by the Design Professional, the Owner shall not bring any claim against the Design Professional and shall indemnify and hold the Design Professional, its agents and employees harmless from and against claims, losses, damages and expenses, including but not limited to defense costs and the time of the Design Professional, to the extent such claim, loss, damage or expense arises out of or results in whole or in part from such deviations, regardless of whether or not such claim, loss, damage or expense is caused in part by a party indemnified under this provision.*

### **ARTICLE 3 ADDITIONAL SERVICES**

#### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services.

#### **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**3.2.1** If more extensive representation at the site than is described in Subparagraph 2.5.5 is required, the Architect, as an additional expense, shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

#### **3.3 CONTINGENT ADDITIONAL SERVICES**

**3.3.1** Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents;
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner; or
- .4** due to changes required as a result of unforeseen conditions.

**3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

**3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

**3.3.4** Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

**3.3.5** Providing services in connection with unforeseen conditions and making subsequent revisions to drawings or specifications.

**3.3.6** Providing consultation concerning replacement of Work damaged by fire, vandalism, or other cause during construction, and furnishing services required in connection with the replacement of such Work.

**3.3.7** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**3.3.8** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

**3.3.9** Providing services in connection with preparation and meetings for Planning Board, Zoning Board, public hearings, etc. Providing services in connection with arbitration proceedings or legal proceedings except where the Architect is party thereto.

**3.3.10** Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

#### **3.4 OPTIONAL ADDITIONAL SERVICES**

**3.4.1** Providing special surveys, site engineering, environmental studies, design of site detention, retention systems, water quality or storm water management systems and their submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**3.4.2** Providing services relative to future facilities, systems and equipment.

**3.4.3** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

**3.4.4** Providing estimates of Construction Cost, which would be more accurate than preliminary budget estimate prepared by Architect.

**3.4.5** Providing detailed quantity surveys or inventories of material, equipment and labor.

**3.4.6** Providing analyses of owning and operating costs.

**3.4.7** Providing services for preparation of documents required for lawsuits or arbitration proceedings.

**3.4.8** Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**3.4.9** Providing building commissioning or assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation. Providing Building Dept. or other governmental expediting services.

**3.4.10** Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

**3.4.11** Providing services of consultants including civil/site consultants, if required, for other than normal architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

**3.4.12** Providing services in connection with receiving grants from governmental agencies or authorities including, but not limited to, Village, Town, City, County, State, and Federal.

**3.4.13** Providing expediting services for Building Dept. and other governmental agencies required.

**3.4.14** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

**4.1** The Owner shall provide full information regarding requirements for the Project, including a 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.

**4.2** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**4.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining 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.

**4.4** The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

**4.4.1** The Owner shall provide services of an independent LEED consultant if owner desires to have building designed or certified as a LEED building.

**4.4.2** The Owner shall furnish the services of other consultants when such services are requested by the Architect.

**4.5** The Owner shall furnish structural, mechanical, plumbing, electrical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law, the Contract Documents, or as required by the Architect.

**4.6** The Owner shall retain services of an attorney, if application is made to Zoning Board and any other Board that architect deems necessary for legal representation.

**4.7** The services, information, surveys and reports required by Paragraphs 4.3 through 4.5 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

**4.8** Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 DEFINITION**

**5.1.1** The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

**5.1.2** Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

**5.2.1** It is recognized that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect, the Owner or any consultant.

**5.2.2** If a fixed limit of Construction Cost is exceeded by the lowest bona-fide bid or negotiated proposal, the Owner shall:

**.1** give written approval of an increase in such fixed limit;

**.2** authorize rebidding or renegotiating of the Project within a reasonable time;

**.3** if the Project is abandoned, terminate in accordance with Paragraph 8.3; or

**.4** cooperate in revising the Project scope and quality as required to reduce the Construction Cost, as an additional service to the architect.

**5.2.3** If the Owner chooses to proceed under Clause 5.2.2.4, the Architect, as an additional charge, shall modify the Contract Documents as necessary to comply, as closely as possible, with the fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

## **ARTICLE 6 USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

**6.1** The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The Architect's

Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect, as indicated in 8.7. The Architect may withhold permission for continued use of the copyright contract documents or other documents prepared by the Architect, if the Architect is not adequately compensated in accordance with contract-agreed fees, or in the absence of specific fee details, in accordance with industry standards.

#### **ARTICLE 7 ARBITRATION**

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, if requested by either party, shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. However, arbitration procedures will not be utilized unless both parties agree to this system of settlement.

#### **ARTICLE 8 TERMINATION, SUSPENSION OR ABANDONMENT**

8.1 This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.2 If the Project is suspended by the Owner for more than 90 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. 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.

8.6 In the event of termination, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

.1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during Construction Phase; or

.2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during Construction Phase.

#### **ARTICLE 9 MISCELLANEOUS PROVISIONS**

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 To the fullest extent permitted by law, Owner agrees to indemnify, defend and hold harmless Architect and/or its subconsultants from any and all claims, suits, damages, liabilities, professional fees, including attorney's fees, costs, court costs, and expenses, as well as any disbursements related to death, personal injuries or property damage (including loss of use thereof). If the architect is sued by the owner or has been put on notice that a suit may be forthcoming, he may suspend any services per this agreement until the legal issue is resolved.

9.5 Waiver of Consequential Damage. Architect and the Owner waive consequential damage for claims, disputes and other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without

limitation, to all consequential damages due to either party's termination in accordance with the provisions defining termination.

**9.6** For any damages on account of error, omission or other professional negligence for services provided by the architect or his consultants, the architect's liability shall be limited to the balance of the architect's fee to be received under this agreement.

**9.7** The Owner shall require the contractor to name the architect as an additional insured on the contractor's insurance policy.

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

**9.9** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect. The Architect's services are being performed solely for the client's benefit. This Agreement forbids any party other than the "Owner", as indicated in this Agreement, to rely on any report or document generated by the Architect without explicit permission to do so from the Architect.

**9.10** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, mold, polychlorinated biphenyl (PCB), lead, or other toxic substances.

**9.11** The Architect is not responsible to Owner or any third parties for errors, omissions, or other deficiencies in the services of any other design professional or design-build contractor rendering design, engineering or related services for benefit of Owner or the Project, whether retained by Architect or Owner. Architect's sole liability in connection with the services of Consultants or design-build contractors shall be to coordinate the Consultant's portion of the instruments of service.

## **ARTICLE 10 PAYMENTS TO THE ARCHITECT**

### **10.1 REIMBURSABLE EXPENSES**

**10.1.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the

interest of the Project, as identified in the following Clauses:

**10.1.1.1** Expense of fees paid for securing approval of authorities having jurisdiction over the Project.

**10.1.1.2** Expense of reproductions, plots, postage and handling of Drawings, Specifications and other documents.

**10.1.1.3** If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**10.1.1.4** Expense of renderings, models and mock-ups.

**10.1.1.5** Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

### **10.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**10.2.1** Any initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

**10.2.2** Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

**10.2.3** If and to the extent that the time initially established in Subparagraph 11.5.1 and 11.5.2 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed at the rates set forth in Subparagraph 11.3.2.

**10.2.4** When 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 Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### **10.3 PAYMENTS WITHHELD**

**10.3.1** No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors.

## **ARTICLE 11 BASIS OF COMPENSATION**

The Owner shall compensate the Architect as follows:

**11.1 AN INITIAL PAYMENT** of **One Thousand** Dollars (\$ 1,000.00 ) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

**11.2 BASIC COMPENSATION**

**11.2.1 FOR BASIC SERVICES**, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

See Article 12

**11.2.2 Progress payments for Basic Services** in each phase, as described in Article 2, shall total the following percentages of the total Basic Compensation payable:

- a. Schematic Design Phase ..... 25%
- b. Construction Document Phase ..... 55%
- c. Bidding or Negotiation Phase ..... 5%
- d. Construction Phase ..... 15%

Note: Compensation shall be calculated using estimated construction cost until actual construction cost is established.

**11.3 COMPENSATION FOR ADDITIONAL SERVICES**

**11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES**, as described in Paragraph 3.2, hourly compensation shall be computed as follows:

Principal	\$225.00
Senior Architect	\$195.00
Senior Engineer	\$190.00
Architect	\$190.00
Engineer	\$180.00
Landscape Architect	\$165.00
Designer	\$165.00
Junior Designer	\$155.00

**11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT**, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, hourly compensation shall be computed as follows:

Principal	\$225.00
Senior Architect	\$195.00
Senior Engineer	\$190.00
Architect	\$190.00
Engineer	\$180.00
Landscape Architect	\$165.00
Designer	\$165.00
Junior Designer	\$155.00

**11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS** (whether contracted directly by the owner or not), including, but not limited to, additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4 or identified in Article 12 as part of Additional Services, a multiple of (1.25) times the amounts billed to the Architect for such services.

**11.4 REIMBURSABLE EXPENSES**

**11.4.1 FOR REIMBURSABLE EXPENSES**, as described in Paragraph 10.1, and any other items included in Article 12 as Reimbursable Expenses, a multiple of ( 1.25 ) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

**11.5 ADDITIONAL PROVISIONS**

**11.5.1** If the basic services (items a thru d indicated above) covered by this Agreement have not been completed within (12) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.2.3 and 11.3.2.

**11.5.2** If construction continues more than the allowable construction time frame indicated in the base agreement between owner and contractor, exclusive of any change orders, extension of the architect's services beyond that time shall be compensated as provided in subparagraph 10.2.3 and 11.3.2.

**11.5.3** Payments are due and payable ( 15 ) days from the date of the Architect's invoice. Amounts unpaid ( 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

1.5% per month

**11.5.4** The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

**ARTICLE 12  
OTHER CONDITIONS OR SERVICES**

Phase I Services:

- ❖ Program Analysis
  - We will work with you on developing a precise program or list of all aspects of the firehouse that should be addressed including functional as well as group comfort upgrades.
- ❖ Master Planning
  - While working with the fire officials, we will incorporate the results of the program into pre-schematic drawings.
- ❖ Cost Estimating
  - We will provide a rough-cost estimate on the master plan.

Architect's Fee for this Phase ..... \$9,650.00

(Note: Phase II services will only take affect when/if we are authorized to proceed, presumably after adequate funding is obtained.)

Phase II – Design Phase Services:

- ❖ Article 2.1 – 2.4.1

Architect's Fee for this Phase ..... Lump sum equal to 8% of Construction Cost

Phase III – Construction Phase Services (Optional):

- ❖ Article 2.5 – 2.5.21

Architect's Fee for this Phase ..... Lump sum equal to 2% of Construction Cost

NOTE: Balance of Articles are part of all phases.

If the Architect is not retained for Construction Phase Services, then, the payment breakdown will be as follows:

Schematic Design Phase .....	35%
Construction Document Phase .....	60%
Bidding or Negotiation Phase .....	5%

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

OWNER

\_\_\_\_\_  
(Signature) Dated:

\_\_\_\_\_  
(Printed name and title)

ARCHITECT

 5/2/14  
 \_\_\_\_\_  
 (Signature) Dated

Peter F. Gaito, A.I.A.

\_\_\_\_\_  
(Printed name and title)