

**AGREEMENT # 18188**  
**ARCHITECTURAL/ENGINEERING DESIGN SERVICES**  
**For LAKE COUNTY**

This Agreement is entered into by and between Lake County hereinafter ("County") and FGM Architects hereinafter ("Architect"), 1211 West 22<sup>nd</sup> Street, Suite 700, Oak Brook, IL 60523.

**RECITALS**

WHEREAS, Lake County is seeking an Architect to provide Architectural/Engineering Design services.

WHEREAS, the Architect is a professional provider of Architectural/Engineering Design services; and

WHEREAS, Lake County Purchasing Division issued Statement of Interest Number 18188 in connection with this procurement; and

WHEREAS, the Purchasing Agent and the selection committee have determined that the Proposals submitted by the Architect on December 13, 2018 is the most advantageous proposal received, and best serves the interests of Lake County; and

WHEREAS, the Lake County Board has passed a resolution at its regular meeting on March 12, 2019 authorizing the Purchasing Agent to execute this Agreement;

**NOW, THEREFORE, Lake County and the Architect AGREE AS FOLLOWS:**

**SECTION 1. AGREEMENT DOCUMENTS**

The Agreement Documents that constitute the entire agreement between the County and the Architect are:

- A. This Agreement
- B. Architect's Proposal dated February 8, 2019 noted herein as Exhibit A
- C. Statement of Interest (SOI) Number 18188
- D. The Architect's Response to Statement of Interest 18188 dated December 13, 2018

In the event of conflict between or among the above Documents, the Documents listed above are in the order of precedence.

**SECTION 2. SCOPE OF SERVICES**

Work to be performed under this contract will include architectural/engineering (architect-of-record) services to provide a complete and comprehensive design for a new Consolidated Public Safety Facility.

Based on Statement of Interest 18188 and Architect's discussions with Lake County, Architects has defined its scope of work into two components: 1) Phase 2 Design services including program verification, design development, Babcox Justice Center preliminary planning, and any additional site engineering required and 2) Phase 3 Construction or Implementation services including

contract documents, bidding and negotiation, construction contract administration and close-out phases.

A detailed scope of services and key deliverables is outlined in Exhibit A, which is attached hereto.

Subsequent services will be approved by the appropriate Lake County staff and/or the appropriate Lake County Board Committee, and executed as an Amendment to this Agreement. The parties agree to use the terms and conditions of this Agreement as a framework for any subsequent services.

### **SECTION 3. DURATION**

This Agreement shall commence upon execution and shall be effective through final acceptance of construction. The Architect shall be responsible for performance through the construction period even if the actual construction time extends beyond the estimated completion date. The Architect shall submit a schedule for County approval of the work to be performed.

### **SECTION 4. INDEMNIFICATION**

The Architect agrees to indemnify, save harmless and defend the County, its agents, servants, and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and attorney's fees, for or on account of any bodily injury to any person, or any death at any time resulting from such injury, or any damage to property, which may arise or which may be alleged to have arisen out of or in connection with the Architect's negligent acts or willful and wanton conduct in connection with the services covered by this Agreement. The foregoing indemnity shall apply except if such injury, death or damage is caused by the willful and wanton conduct of the Lake County, its agents, servants, or employees or any other person indemnified hereunder.

### **SECTION 5. INSURANCE**

The Architect must obtain, for the Agreement term and any extension of it, insurance issued by a company or companies qualified to do business in the State of Illinois and provide the County with evidence of insurance. Insurance in the following types and amounts is necessary:

Worker's Compensation Insurance covering all liability of the Architect arising under the Worker's Compensation Act and Worker's Occupational Disease Act limits of liability not less than statutory requirements.

- ☐ Comprehensive General (Public) Liability in a broad form, to include coverage for the following where exposure exists: Premises/Operations, Independent Contractors, Products/Completed Operations, Personal Injury and Contractual Liability, limits of liability not less than:

General Aggregate Limit	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000

- ☐ Professional Liability to include, but not be limited to, coverage for Errors and Omissions to respond to claims for loss therefrom.

General Aggregate Limit	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000

- Comprehensive Automobile Liability to include, Bodily Injury, Property Damage:

General Aggregate limit	\$ 2,000,000
Each Occurrence Limit	\$ 1,000,000

Architect agrees that with respect to the above required insurance, Lake County shall:

- Be named as additional insured by endorsement as their interest may appear (except for Professional Liability and Worker's Compensation insurance);
- Be provided with thirty (30) days notice, in writing, of cancellation or material change;

Be provided with Certificates of Insurance evidencing the above-required insurance, prior to commencement of this Agreement and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration of cancellation of any such policies. Forward Notices and Certificates of Insurance to: Lake County Purchasing Division, 18 N. County St, Waukegan, IL 60085-4350

#### SECTION 6. AGREEMENT PRICE

Lake County will pay to the Architect a lump sum amount of five hundred twenty-two thousand eight hundred thirteen dollars (\$522,813) including expenses, for Phase 2 Design services per the following schedule of services:

<b>Phase 2 Design Services</b>	<b>TOTAL</b>
Program Verification	\$23,400.00
Design Development Phase	\$456,733.00
Babcox Justice Center Preliminary Planning & Coordination	\$25,180.00
Additional Site Engineering (Site Topographical Survey) Allowance	\$9,000.00
Additional Site Engineering (Wetland Delineation) Allowance	\$6,000.00
<b>Sub-Total</b>	<b>\$519,633.00</b>
Reimbursable Allowance	\$2,500.00
<b>TOTAL - Phase 2 Design Services</b>	<b>\$522,813.00</b>

If the County elects to extend the contract for subsequent Phase 3 Construction services including contract documents, bidding and negotiation, construction contract administration and close-out phases, Lake County will negotiate the final scope of work desired. Based on the current scope of work identified in Exhibit A, the estimated additional lump sum fee, including expenses is one million three hundred sixty-four thousand seven hundred eighty-nine dollars (\$1,364,789) per the following schedule of services:

<b>Phase 3 Construction (or Implementation) Services</b>	<b>TOTAL</b>
Construction Document Phase	\$805,647.00
Bidding & Negotiation Phase	\$70,982.00
Contract Administration Phase	\$450,628.00
Project Closeout Phase	\$33,032.00
<b>Sub-Total</b>	<b>\$1,360,289.00</b>
Reimbursable Allowance	\$4,500
<b>TOTAL - Phase 3 Construction Services</b>	<b>\$1,364,789.00</b>

#### SECTION 7. INVOICES & PAYMENT

The Architect shall submit invoices detailing the services performed in accordance with the payment provisions of this Agreement. The Architect may submit invoices for work performed on a monthly basis up to the level of each deliverable less a 10% holdback until each deliverable is completed and accepted by the County. Holdback will be reduced from 10% to 5% at the County's acceptance on the Contract Documents (CD) Phase. Furthermore, the amount of retainage will be reduced from 5% to 0%, no later than 60 days from the date of substantial completion. Full payment shall be due upon final project acceptance by the County. Payments shall be made in accordance with the Local Government Prompt Payment Act. See Attachment 1.

#### **SECTION 8. STATEMENT OF OWNERSHIP**

The drawings, specifications and other documents prepared by the Architect for this Project shall become the property of the County upon full payment owed Architect under this Agreement in, accordance the holdback provisions in Section 7, and Architect may not use this information for any purpose not relating to the Project without the County's consent, except for the Architect's standard details and specifications. The County shall be furnished with the drawings via electronic format (PDF, AutoCAD and/or Revit formats), the specifications via electronic format (PDF and Word formats) and with reproductions of drawings and specifications as the County may reasonably require. Upon completion of the Contractor's Work or any earlier termination of this Agreement, as provided for herein, the Architect will submit all report and plan information compiled to date. All such drawings and specifications shall be the property of the County who may use them without Architect's permission for any current or future related Lake County projects. The Lake County agrees that any use or reuse of Architect's work product for purposes other than anticipated in Architect's scope of work hereunder shall be at the County's sole risk and with no liability to the Architect.

#### **SECTION 9. TERMINATION**

The County reserves the right to terminate this Agreement, or any part of this Agreement, upon thirty (30) days written notice.

The County may, at any time, terminate the Agreement for the County's convenience and without cause. Upon receipt of written notice from the County of such termination for the County's convenience, the Architect shall:

- ❑ Cease operations as directed by the County in the notice;
- ❑ Take actions necessary, or that the County may direct, for the protection and preservation of the Work; and
- ❑ Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and Purchase orders.

In case of such termination for the County's convenience, the Architect shall be entitled to receive payment from the County for work completed to date in accordance with the terms and conditions of this Agreement.

In the event of an alleged default of the Agreement by the Architect, the County will provide a written notice to the Architect defining the default(s) and give seven days for the Architect to cure said default(s). If the default(s) is not cured, then the County will provide written notice of termination to the Architect.

In the event that this Agreement is terminated due to Architect's default, the County shall be entitled to purchase substitute items and/or services elsewhere and charge the Architect with any or all losses incurred, including attorney's fees and expenses.

#### **SECTION 10. SCHEDULE**

The Architect shall submit for the County's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the County's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the County shall not, except for reasonable cause, be exceeded by the Architect or County.

#### **SECTION 11. OWNER'S REPRESENTATIVE**

The County shall designate a representative authorized to act on the County's behalf with respect to the Project. The County 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.

#### **SECTION 12. CONSTRUCTION COST**

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

The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Contractor and equipment designed, specified, selected or specially provided for by the Agreement Documents, plus a reasonable allowance for the Contractor's overhead and profit. The Construction Cost shall include the cost of building code compliance, permits, and fees. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

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 that are the responsibility of the County.

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

- ☐ give written approval of an increase in such fixed limit;
- ☐ authorize re-bidding or renegotiating of the Project within a reasonable time;
- ☐ abandon project and terminate the Architect Agreement; or
- ☐ Cooperate with Architect in revising Project scope and quality as required to reduce Construction Cost.

If the County chooses to revise the project scope, the Architect, without additional charge, shall modify the Agreement Documents as necessary to comply with the fixed limit.

#### **SECTION 13. JURISDICTION, VENUE, CHOICE OF LAW**

This Agreement shall be governed by and construed according to the laws of the State of Illinois. Jurisdiction and venue shall be exclusively found in the 19th Judicial Circuit Court, State of Illinois.

#### **SECTION 14. INDEPENDENT CONTRACTOR**

The Architect is an independent contractor and no employee or agent of the Architect shall be deemed for any reason to be an employee or agent of the County.

#### **SECTION 15. WARRANTS**

The Architect represents and warrants to the County that none of the work included in this Agreement will in any way infringe upon the property rights of others. The Architect shall defend all suits or claims for infringement of any patent, copyright or trademark rights and shall hold the County harmless from loss on account thereof.

#### **SECTION 16. ASSIGNMENT, ALTERATIONS AND MODIFICATIONS**

Except as otherwise provided herein, this Agreement shall not be assigned or altered without the express written consent of both parties. This Agreement supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

#### **SECTION 17. DISPUTE RESOLUTION**

Each party shall make good faith effort to resolve any contract disputes prior to either party pursuing remedies at law. Direct negotiation, as defined below, will be the initial process utilized by the parties.

Either the Owner or the Architect may make a request for Direct Negotiation as an initial attempt to resolve any claim, dispute, or other matter arising out of this agreement.

Direct Negotiation Representatives of the parties shall be the Owner's designated Representative and the Architects designated Representative.

Direct Negotiation will take place at the project worksite or at a location as agreed to by Owner's and Architects designated Representative.

Issues, claims, or disputes arising out of this Agreement unable to be resolved by Direct Negotiations shall then be resolved in accordance with the Appeals and Remedies Provisions in Article 9 of the Lake County Purchasing Ordinance. See Attachment 2.

#### **SECTION 18. NO IMPLIED WAIVERS**

The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

#### **SECTION 19. NOTICES AND COMMUNICATIONS**

All notices and communications which may be given by the Architect to Lake County relative to this Agreement shall be addressed to: Lake County Purchasing Division, 18 North County Street, Waukegan, Illinois 60085-4350; Attention: Purchasing Agent.

#### **SECTION 20. SEVERABILITY**

If any part of this Agreement shall be held to be invalid for any reason, the remainder of this Agreement shall be valid to the fullest extent permitted by law.

IN WITNESS HEREOF, the undersigned have caused this Agreement to be executed in their respective names on the dates hereinafter enumerated.

Lake County:

Architect:

\_\_\_\_\_  
RuthAnne Hall  
Purchasing Agent  
Lake County  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Print Firm: \_\_\_\_\_  
Date: \_\_\_\_\_

Architect:

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Print Firm: \_\_\_\_\_  
Date: \_\_\_\_\_