



March 24, 2020

Shawn O'Leary, P.E., CFM  
Director of Public Works  
The City of Norman  
Public Works Department  
201 W. Gray, Building A  
Norman, OK 73069

Re: Fee Proposal/Agreement for Accessibility Consulting Services  
Accessibility Survey/Audit City of Norman

Dear Mr. O'Leary:

Thank you for your invitation to provide accessibility consulting services for City of Norman "Client" facilities.

In this package you will find the following:

- Cover Letter and Signature Page (this document)
- Fee Proposal/Agreement/Agreement for Accessibility Consulting Services
  - Overview
  - Compensation
  - Invoicing and Payments
  - Scope of Work
  - Client Administration Responsibilities
  - Key Assumptions, Qualifications, & Clarifications
- Standard Terms and Conditions
- Rate Schedule

The provided Scope of Services is presented to give the Client options concerning the Scope of Services. Client must indicate the selected Scope of Services desired in the execution of the agreement.

Brad Gaskins will be the principal in charge of this account and McIntosh will also assign a program manager to handle the day-to-day logistics and business.

Should you have any questions or wish to discuss any aspect of this Fee Proposal/Agreement, your questions are most welcome.

**License Numbers**

State	License #	Licensee	State	License #	Licensee
OK	2838	M. Bradley Gaskins	OK	2321	Ellis Landers McIntosh Jr.
OK	5436	Patrick Scott Golden			

**Practice Entities**

The services under this Agreement shall be performed by the entities listed below as applicable to the state the location of the facility is located in.

State	Entity	State	Entity
OK	The McIntosh Group LLC		

The McIntosh Group, LLC (The McIntosh Group, LLC, The McIntosh Group, LLP, The McIntosh Group OK, PLLC, The McIntosh Group, Inc., Ellis L. McIntosh Jr., AIA, and M. Bradley Gaskins, AIA, to the extent providing services set forth above under Practice Entities) collectively referred to herein as "McIntosh" and "Client" herein enter the following Agreement for Professional Services (the "Agreement). All services shall be invoiced by and payable to The McIntosh Group, LLC.

Signature below indicates that you understand and accept the Fee Proposal/Agreement and attached Terms and Conditions, and Standard Fee Schedule and that you agree to be bound by its provisions.

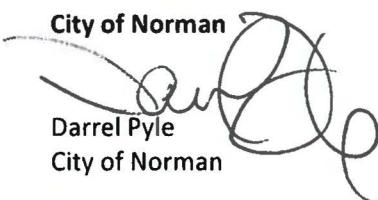
Sincerely,



The McIntosh Group, LLC

M. Bradley Gaskins, AIA, CASp  
Principal

Agreed



City of Norman  
Darrel Pyle  
City of Norman

## OVERVIEW

This Fee Proposal/Agreement outlines the arrangements for ADA Compliance Consulting Services for the built environment at Client locations system-wide. The issued report(s) will assist Client in determining facility accessibility compliance and its ability to provide an accessible environment at its facilities. The results of the survey/audit, along with action by Client, are intended to aid Client in providing a more accessible facility, reduce the likelihood of legal action, and open up access to a market segment they may be missing.

This Fee Proposal/Agreement is based upon the survey/audits on 10 facilities to be completed on two trips trip.

## COMPENSATION

The Client shall compensate McIntosh in the amount shown below in accordance with the attached Terms and Conditions and Rate Schedule. The designated survey/audit scope shall be Level III, non-attesting.

Survey/Audit Norman Central Library .....	\$5000.00
(New facility, 3 stories, ±80,000 SF)	
<b>TOTAL</b>	<b>\$5,000.00</b>

Travel expenses are included in the services fee.

## INVOICING AND PAYMENTS

McIntosh shall determine and submit invoices for the location surveyed/audited on the Friday following the survey/audit.

## SCOPE OF SERVICES

McIntosh shall perform the Services described below and as further detailed in the attached Exhibit A. The Services shall be based upon the Americans with Disabilities Act Title III Regulations as issued by the Department of Justice September 15, 2010. Further the following Accessibility Standards, as they apply to the built environment, will be used for the survey/Audit.

- 2010 ADA Standards
- 2015 International Building Code

McIntosh shall apply their standard tolerances to the determination of compliance. If the Client desires differing tolerances the Client shall notify McIntosh prior to the start of the field work.

### A.1 Accessibility Compliance Survey/Audit and Report

- **Scope Level III – Full**
- McIntosh shall perform a full survey/audit of the facility utilizing the standard McIntosh checklist containing more than **3500 items** to direct and identify barriers through appraisal, measurements, counts, and observations of identified areas/spaces/items/elements and prepare a report of the identified barriers.
- Scope shall include photographs of each area/space/item/element but shall not include tape measures and levels included in the photographs. Scope shall include logging the measurements that are encountered during the survey that are determined to be barriers. Items and elements that are determined to be in compliance will not have their measurements logged. McIntosh will conduct a call to discuss the report upon delivery as necessary.

### A.2 Miscellaneous Questions Support

McIntosh shall provide limited miscellaneous questions support to Client by answering occasional basic questions throughout and immediately following the length of the survey/audit process. Additional complex questions requiring research or documentation shall be invoiced hourly per the Standard Hourly Rate.

### A.3 Estimate of Barrier Removal Construction Cost

McIntosh shall provide an element by element Estimate of Barrier Removal Construction Cost as part of the report. The Estimate of Barrier Removal Construction Cost for each element shall be the total cost to the Client to remove each existing non-compliant element and reconstruct or replace each element as necessary for barrier removal and shall include contractors' general conditions costs, overhead and profit. The Estimate of Barrier Removal Construction Cost is based upon the time of preparation of the possible solution listed in the Accessible Barrier Report. The total Estimate of Barrier Removal Construction Cost for each element shall not necessarily be the sum of the Estimate of Barrier Removal Construction Cost for each element. The Estimate of Barrier Removal Construction Cost does not include the compensation of the Designer/Architect, design, barrier removal documents, permitting, land or rights-of-way cost, financing, or for contingencies or other costs that are the responsibility of the Client.

McIntosh does not have control over the cost of labor, materials or equipment; the Contractor's methods of determining prices; or competitive bidding, market or negotiating conditions and as such McIntosh

cannot and does not warrant or represent that costs will not vary from the Estimate of Barrier Removal Construction Cost. The Estimate of Barrier Removal Construction Cost shall be based on national averages of current area, volume or similar conceptual estimating techniques and shall not be a detailed estimate.

It should be noted that other levels of surveys/audits scope are available as follows.

**Scope Level I – Visual Walk-thru**

This is an exceptionally limited scope assessment of the physical site and only includes a cursory walk through and opinion of major visually identifiable pertinent physical access barriers and does not include a check-list directed appraisal, measurements, or counts of any areas/spaces/items/elements. Photographs are limited and shall not include tape measures and levels included in the photographs.

**Scope Level II – Abridged**

This is a partial scope assessment of the physical site and only includes an illustrative sampling of areas/spaces/items/elements and shall not include tape measures and levels included in the photographs.

**Scope Level IV – Evidentiary Limited Scope A**

This is a full scope assessment of the physical site and areas/spaces/items/elements which includes tape measures and levels included in the photographs showing the measurements observed for only the elements identified as barriers.

**Scope Level V – Evidentiary Limited Scope B**

This is a full scope assessment of the physical site and areas/spaces/items/elements which includes tape measures and levels included in the photographs showing the measurements observed for all elements identified in a complaint as provided by the Client.

**Scope Level VI – Evidentiary Full Scope**

This is a full scope assessment of the physical site and areas/spaces/items/elements which includes tape measures and levels included in the photographs showing the measurements observed for all elements.

**OTHER AVAILABLE SERVICES**

McIntosh can provide the following additional services under a separate agreement at Client's request but are not included in this scope of services.

- Assist Client in determining "readily achievable" and "technically infeasible" barrier removal determinations.
- Access Plan Development.
- Facility Compliance Certification based upon Client supplied compliance data.
- Facility Compliance Certification based upon additional McIntosh Site Survey/Audit.
- Architectural drawing review.
- Database access.
- Face to Face meetings.
- Conference Call meetings.

- Architectural and engineering services to provide limited scope Barrier Removal Solution Sets utilizing standard details.
- Architectural and engineering services to provide Barrier Removal Construction Documents.
- Evidentiary Documentation as requested by Clients counsel.
- Expert witness/testifying services.
- Assist Client in determining alternate methods for access when barrier removal is not feasible.
- Assist Client in determining “reasonable accommodation” when barrier removal is not feasible.
- Client staff/contractor training.
- Provide a comprehensive evaluation of policies, procedures, communications, programs, services, activities and/or benefits offered by the Client.
- Assist in planning capital budgets and schedules for barrier removal.

## **CLIENT ADMINISTRATION RESPONSIBILITIES**

Client administration responsibilities include the following:

- Coordinate access to locations, approvals, and purchase orders. Client will notify the locations to be surveyed/audited prior to the scheduled McIntosh survey/audit.
- Provide a representative to accompany McIntosh during the entire survey/audit or portions thereof, such as guest rooms, as appropriate as determined by McIntosh.
- Provide accesses to all areas/spaces/items/elements when needed by McIntosh.
- Provide the right to enter sites/facilities as necessary for McIntosh to perform the survey/audit.
- Provide appropriate security and accompaniment as required by McIntosh or otherwise deemed appropriate by Client based upon area facility is located in.
- Provide clear sites (free of snow and debris) ready to be surveyed/audited.
- Furnish required information, approvals, and decisions as expeditiously as necessary for the orderly progress of the Services.
- Furnish all legal, human resources/employment, financial/accounting, and insurance counseling services as may be necessary at any time with respect to the location(s) compliance with law.

## **KEY ASSUMPTIONS, QUALIFICATIONS & CLARIFICATION**

The items below provide added clarification to items contained in the Fee Proposal/Agreement:

1. Client acknowledges and agrees that McIntosh is only providing accessibility consulting services and nothing in these services shall be construed to be legal services or advice. Further, the Client acknowledges and agrees that under federal law it is solely responsible for non-discrimination under the American with Disabilities Act (ADA) and other applicable law and that civil lawsuits under the ADA and other access laws (frivolous or otherwise) remain possible regardless of the services of McIntosh or the actions taken by Client. Where Client believes legal, accounting, or other expert professional assistance services are required, Client will engage the services of competent professionals.
2. Audit scope expressly excludes alarm testing, locations that are not made available to the survey/auditor, opening/full evaluation of doors that cannot be opened without activating an alarm, and evaluations that take specialty equipment to determine compliance including but not limited to light meters and sound level meters.

3. McIntosh cannot determine if a specific barrier removal is "Readily Achievable" or "Technically Infeasible". These are determinations that must be made, documented, and potentially defended by the Client. McIntosh can make recommendations and assist the Client in making these determinations.
4. Control of logistics. This Fee Proposal/Agreement assumes McIntosh will have the ability to manage the sequence of survey/audits within each slot.
5. Intellectual Property. It is expressly understood that McIntosh owns the intellectual property rights and copyright to the checklist, McIntosh's proprietary survey/audit process and database, any innovations associated with the performance of McIntosh's services, report formats, and this aspect of Agreement is not "work made for hire". Client shall be granted a limited license to utilize such tools during the life of this agreement such that payment in full is made by Client. Client further agrees to hold the Intellectual Property in strict confidence and shall not disclose such information to any third party without the written permission of McIntosh. Client also agrees to employ all steps necessary to protect the Intellectual Property from unauthorized disclosure or use, including without limitation, all steps Client uses to protect information they consider proprietary and a trade secret.
6. McIntosh's Standard Terms and Conditions, as attached, shall apply. If there are any conflicts of terms between the Scope of Services or Key Assumptions and the Standard Terms & Conditions, the Scope of Services or Key Assumptions shall govern.
7. When this Fee Proposal/Agreement is used as an attachment/exhibit to another Agreement and becomes part of that Agreement the terms and conditions of this attachment/exhibit shall govern in all cases of conflict unless specifically noted that the terms and conditions of this attachment/exhibit are deferential.
8. This Fee Proposal/Agreement will become the Agreement for the Work once executed by both parties and indicated as such by signatures on the Cover Letter and not used as an attachment/exhibit to another Agreement.



**McIntosh**

**EXHIBIT A**

SCOPE OF SERVICES DETAILS

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#### **A.1 Accessibility Compliance Survey/Audit and Report**

##### **Scope Level III – Full**

McIntosh shall visually evaluate and measure the location(s) utilizing McIntosh's standard process for visual identification compliance with ADA Title III/1991 ADA Standards, 2010 ADA Standards, and current STATE Standards as they apply to the built environment. This is a full scope assessment of the physical site and areas/spaces/items/elements and opinion of visually identifiable pertinent physical access barriers based upon a check-list directed appraisal, measurements, or counts of the appraised areas/spaces/items/elements.

Areas/spaces/items/elements that may be surveyed/audited, based upon initial conversations, will include major public accessible areas, access points to employee work areas to determine approach, enter, and exit compliance, and common use employee areas as well as the major accessible routes and paths of travel to these areas/spaces/items/elements. McIntosh will attempt to enter and audit/survey all Accessible Guest Rooms and view a small number of standard Non-Accessible Guest Rooms. These may be further broken down as follows:

##### **Public Accessible Areas**

- Accessible guest rooms.
- Accessible parking spaces/passenger loading zones.
- Accessible routes from parking lots/passenger loading zones.
- Accessible routes from public ways/bus stops.
- ATMs.
- Bars.
- Building Entrances/vestibules.
- Controls.
- Drinking fountains.
- Elevators.
- Interior accessible routes from building entrance to accessible elements.
- Meeting Rooms.
- Pay telephones.
- Public toilet rooms.
- Public usable equipment.
- Restaurants.
- Cafeterias.
- Sales Counters.
- Signage.
- Stairs.
- Transaction spaces.
- Others as may be public accessible but not listed.

##### **Areas and Items Specifically Excluded**

- Employee Areas
- Fire Alarm Components and Testing.
- Means of Egress Components
- Automatic, Power Assist, and Low Energy Door Operation

This list is not necessarily all inclusive of the areas/spaces/items/elements that may be surveyed/audited and may include items that do not apply to the specific facility being surveyed/audited. Other areas/spaces/items/elements may be identified on site in the general category and will be included in the survey/audit scope.

McIntosh shall prepare an Accessibility Summary Report and Accessibility Barrier Report for the location(s) identifying barriers which could reasonably be identified and shall include McIntosh's professional opinion with respect to the relative risk, severity, and suggested priority for removing the identified barriers. McIntosh will use its suggested interpretive parameters for the report preparation along with reporting based upon its opinion of conventional construction and manufacturing tolerances.

McIntosh shall make the raw data available to the client via web access by the Friday of the first week following the returning from the field work and by the Friday of the second week following the return from field work the Accessibility Summary Report and Accessibility Barrier Report identifying barriers which could reasonably be identified for that given location(s) will be available, in PDF form, for review.

The Accessibility Barrier Report will report the barriers identified, general non-evidentiary photographs of the surveyed/audited elements (NOT including tape measures or other measuring devices in the photograph), and Standards section in which the areas/spaces/items/elements are not in compliance. Photographs shall show the context of the areas/spaces/items/elements when possible as well as the actual areas/spaces/items/elements. Additionally, measurements of the non-compliant areas/spaces/items/elements will be recorded and shown in context with the required measurements and McIntosh's opinion of conventional construction and manufacturing tolerances as part of the attesting scope but are not recorded or shown in the non-attesting scope. McIntosh shall provide an opinion of the suggested removal priority, and may include written potential/possible general solutions to each barrier reported from which Client can choose to use at its discretion. Additional work may be required by Client to determine and develop the actual final desired solution for the barrier removal.

McIntosh shall review, for historical information, any previous accessibility survey/audit reports that were prepared for the facility and that are made available by Client for review prior to the survey/audit.



# McIntosh

## STANDARD TERMS & CONDITIONS

### ACCESSIBILITY CONSULTING SERVICES

## ARTICLE 1 MCINTOSH'S SERVICES

**1.1** As used in the Agreement and these Terms and Conditions, "McIntosh" shall mean The McIntosh Group, LLC and all forms through which it does business including, The McIntosh Group OK, PLLC, The McIntosh Group OK, LLC, The McIntosh Group LLP, Ellis L. McIntosh, Jr., AIA, and M. Bradley Gaskins, AIA.

**1.2** McIntosh shall provide services as expeditiously as is consistent with ordinary and reasonable care and with the orderly progress of the Project, subject to reasonable interpretation of McIntosh. The Client agrees that there are many circumstances beyond the control of McIntosh that will affect McIntosh's services and the timing thereof.

**1.3** McIntosh shall provide services in accordance with the reasonable standard of care in a manner consistent with the standards prevailing for other architects providing similar services under similar circumstances. The Client acknowledges that a certain degree of imprecision, ambiguity, inconsistency, and omissions are to be expected in the McIntosh Services, are considered part of the normal process, and are not inconsistent with the prevailing standard of care; therefore, Change Orders are to be expected during the construction of the project, may cause the project to exceed the construction contract sum, and are part of the Client's costs for the project.

**1.4** The Client shall make adequate provision through contingency funds to anticipate and pay for change orders which such contingency shall be a minimum of 10% of the Construction Cost. Client and McIntosh shall confer on any additional appropriate contingency provision given the nature, complexity, time and other constraints, and experience of both parties with projects of this kind. The amount of the contingency shall not limit the applicability of this provision. McIntosh's responsibility for damages caused by negligent errors and omissions in the Services rendered by McIntosh and the McIntosh's consultants shall not include the costs that would have been incurred by the Client in the absence of the error or omission to meet the Client's requirements, legal and code requirements or the program.

**1.5** McIntosh shall review laws, codes, and regulations required by the governmental authorities required to approve the Project and applicable to its services and the Project. McIntosh shall respond in the design of the Project to requirements imposed by the governmental authorities having jurisdiction over the Project. The Client acknowledges that the laws, codes and regulations will be subject to various and possibly contradictory interpretations and McIntosh does not warrant or guarantee its analysis of such laws, codes, and regulations or acceptance by the governmental authorities and that McIntosh cannot control or guarantee the issuance or timing of a Building Permit.

**1.6** The Client acknowledges that the requirements of the Americans with Disabilities Act and other federal, state, and local accessibility laws, rules, codes, ordinances, and regulations will be subject to various and possibly

contradictory interpretations. McIntosh will use its reasonable professional efforts and judgment to interpret applicable accessibility requirements in effect as of the date of submission to the governmental authorities having jurisdiction over the Project and as they apply to the project. McIntosh cannot and does not warrant or guarantee its analysis and interpretations of such laws, codes, and regulations or that the Project will comply with all interpretations of the Americans with Disabilities Act and other federal, state, and local accessibility laws, rules, codes, ordinances, and regulations as they apply to the Project.

**1.7** McIntosh shall NOT have control over or be in charge of or be responsible for the construction costs, means, methods, techniques, sequences, procedures, safety precautions, or safety programs in connection with the Project. The Client acknowledges that these are solely the responsibilities of parties other than McIntosh.

**1.8** McIntosh shall be entitled to rely on the accuracy and completeness of services and information furnished by the Client. The Client recognizes that checking and verification of the accuracy, completeness, and sufficiency of such information is beyond the scope of McIntosh's Services.

## ARTICLE 2 CLIENT'S RESPONSIBILITIES

**2.1** The Client shall designate a representative authorized to act on the Client's behalf in regard to the Project.

**2.2** The Client shall provide full information in a timely manner concerning the Client's objectives, schedule, constraints and existing conditions related to the Project.

**2.3** The Client shall furnish required environmental testing services upon the request of McIntosh.

**2.4** The Client shall furnish a site plan or the information necessary to prepare a site plan when requested by McIntosh.

**2.5** The Client shall furnish the services of consultants other than those provided by McIntosh when required by the scope of the Project and requested by McIntosh.

**2.6** The Client shall furnish all legal, accounting, and insurance services necessary for the Project.

**2.7** The Client shall be responsible for all negotiations with the Landlord, if any.

**2.8** The Client acknowledges that the Contractor controls his Work, is required to inspect his Work for conformance with the Contract Documents, and that McIntosh is not responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

**2.9** The Client shall be responsible for interpreting the Contract Documents for the Contractor, reviewing submittals, certifying payments to the Contractor, and

observing the Contractor's Work unless such work is included in McIntosh's Scope of Services.

**2.10** Discovery, correction and mitigation or errors, inconsistencies and omissions in the Contractor's Work is beyond the scope of the McIntosh Services.

**2.11** The Client shall ensure that consultants provided by the Client coordinate its services with the services of McIntosh.

**2.12** The Client shall be responsible for all building permit processing unless such work is included in McIntosh's Scope of Services.

**2.13** The Client shall be responsible for processing and obtaining all business licenses, food establishment licenses, and occupational licenses, etc.

**2.14** The Client shall review and approve Instruments of Service furnished by McIntosh for the different Phases of the Project. Client shall satisfy itself that the Client's requirements and program have been satisfied. McIntosh shall be entitled to rely on the Client's review and when proceeding from one phase to the next phase. If the Client utilizes the McIntosh Instruments of Service for the Project the Instruments of Service will be deemed to have been reviewed and approved by the Client. McIntosh shall be entitled to rely on the Client's review and approval.

### **ARTICLE 3 DOCUMENTS**

#### **3.1 Instruments of Service.**

**3.1.1** The Drawings, Specifications, and other documents, including all those in electronic form, prepared by McIntosh and its consultants are Instruments of Service.

**3.1.2** McIntosh is the owner of the Instruments of Service and shall retain all reserved rights, including copyrights.

**3.1.3** Drawings and specifications remain the property of McIntosh. Copies of the drawings and specifications retained by the Client may be utilized only for his use and for occupying the Project for which they were prepared, and not for the construction of any other project

**3.1.4** The Client shall be granted a limited and non-exclusive license in the Instruments of Service for information and reference in connection with the Client's use and occupancy of the Project, including the right to retain and make copies for the purposes allowed by the license, provided that the Client complies with all obligations, including prompt payment of all sums when due, under this Agreement and all separate Agreements with McIntosh.

**.1** McIntosh shall be entitled upon any instance of non-payment as defined in Article 5 to rescind the limited and non-exclusive license in the Instruments of Service granted to the Client, by written notice of rescission. The Client shall immediately cease all construction activities and return to McIntosh all copies of the Instruments of Service within 5 days.

**.2** If the Client fails to immediately comply with the notice of rescission of the limited and non-exclusive license, McIntosh may take such action, including legal action as McIntosh deems necessary to collect and destroy all paper and electronic copies of the Instruments of Service. The Client shall reimburse McIntosh for all costs associated with the collection and destruction of the Instruments of Service.

**3.1.5** The Client shall not assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of McIntosh. Any unauthorized use of the Instruments of Service shall be at the Client's sole risk and without liability to McIntosh and its consultants.

#### **3.2 Electronic file transfers.**

**3.2.1** As part of this Agreement, Client may request McIntosh to furnish Electronic Files.

**3.2.2** The Client acknowledges that electronic forms of communication, including but not limited to e-mail, facsimile, file transfer protocols and cloud services may induce error or corruption in electronic files, and that McIntosh cannot assure and does not guarantee that utilizing such services will preserve the integrity of the electronic data, or that the transmission will be secure or protect confidentiality

**3.2.3** The Client shall satisfy itself that the level of accuracy and completeness of the Electronic Files are satisfactory for its needs.

**3.2.4** McIntosh provides no warranties or guarantees that the means or media of electronic transfer of the Electronic Files is free of corruption, error, anomalies, or electronic viruses. The Client acknowledges that it has the sole responsibility for assuring that the Electronic Files are free from defect of every kind.

**3.2.5** McIntosh will not transfer any electronic files to a third party except with the written consent of Client, the receipt of which shall signify Client's assumption of all risks or any kind associated with such file transfer, and Client's agreement to make such transfer subject to the terms of this Section.

**3.2.6** THE CLIENT AGREES TO AND SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD MCINTOSH HARMLESS FROM ANY COSTS, CLAIMS, CAUSES OF ACTION, OR LIABILITY, WHETHER IN TORT, BREACH OF CONTRACT OR OTHERWISE, WHICH MAY RESULT FROM THE USE OF THE ELECTRONIC FILES OR THE MEDIA OF TRANSFER OF SUCH FILES TO CLIENT OR ANY THIRD PARTY.

### **ARTICLE 4 CHANGES OF AGREEMENT**

**4.1** This Agreement represents the entire and integrated agreement between McIntosh and the Client. This Agreement supersedes all prior negotiations, representations, and agreements, either written or oral with respect to this Project.

**4.2** Changes in this Agreement may be made without invalidating this Agreement.

**4.3** Changes in this Agreement shall be mutually agreed to and by written instrument only.

### **ARTICLE 5 PAYMENTS**

#### **5.1 Invoicing of services.**

**5.1.1** McIntosh shall invoice for all Professional Service Fees, Additional Service Fees, and Reimbursable Expenses as milestones are completed or on a monthly basis as determined by McIntosh.

**5.1.2** McIntosh shall deliver invoices electronically in PDF format.

**5.1.3** Client shall have 15 days in which to review and notify McIntosh of any error or irregularity in each invoice. In the event Client does not notify McIntosh within said 15-day period, all objections to the invoice shall be waived and the invoice shall be deemed correct in all respects

## **5.2 Reimbursable expenses.**

**5.2.1** Reimbursable Expenses are those reasonable expenses incurred and directly related to the Project including all taxes levied on the professional services fees and on reimbursable expenses.

**5.2.2** Reimbursable Expenses shall be invoiced at 1.20 times the cost of the expense from outside vendors. Internal Reimbursable Expenses shall be billed per the McIntosh Standard Rate Schedule as updated from time to time.

**5.2.3** Records of Reimbursable Expenses shall be maintained by McIntosh and available to the Client for review upon reasonable request. Back-up data or copies of invoices are not part of the Basic Scope of Services.

## **5.3 Payments.**

**5.3.1** Payment of invoices shall not be subject to any discounts, back charges, or set-offs by the Client unless agreed to in writing by McIntosh.

**5.3.2** Payments are due and payable upon receipt of the invoice. Amounts unpaid 15 days after the date of the invoice shall be subject to a late payment penalty of \$100.00 and accrue interest at the rate of 1.5% per month.

**5.3.3** Payment of all invoices is due, payable and must be received prior to proceeding to the subsequent Phase of Services. Payment of all invoices is due, payable and must be received prior to McIntosh signing and sealing any documents. Optional Services and Reimbursable Expenses invoiced at a later date are in addition to the payment due prior to the start of the Building Permit Processing Phase of Services and shall be payable per ¶5.4.1 and 5.4.5.

**5.3.4** At any time the Client's account balance, including this Agreement or any separate Agreement, described in the Agreement remains negative for more than 15 days, McIntosh shall have the option to immediately suspend the performance of services until all invoices are paid and the Client's account is replenished.

**5.3.5** At any time the Client's account balance, including this Agreement or any separate Agreement, will, in McIntosh's estimation, become negative upon completion of the current Phase of Services, McIntosh shall have the option to immediately suspend the performance of services until all invoices are paid and the Client's account is replenished.

**5.3.6** If the Client's account, including this Agreement or any separate Agreements with McIntosh, falls 15 days past due, or if the Client fails to make payments in accordance with terms of the Agreement or any separate Agreements with McIntosh, this shall be considered non-payment. McIntosh shall be entitled to recover from the Client and the Client shall reimburse McIntosh for all reasonable costs, including litigation costs, attorney's fees, expert's and consultant's fees and the time McIntosh's personnel applied to the collection efforts, incurred in collection of past due sums.

**5.3.7 IN THE EVENT THIS ACCOUNT IS FORWARD TO A THIRD PARTY DEBT COLLECTOR. MCINTOSH SHALL ALSO BE ENTITLED TO RECOVER ITS**

**LITIGATION COSTS, ATTORNEY'S, EXPERT'S AND CONSULTANT'S FEES, AND COLLECTION FEES INCURRED IN COLLECTING THIS ACCOUNT.**

## **ARTICLE 6 DURATION, TERMINATION, SUSPENSION OR ABANDONMENT**

**6.1** This Agreement shall commence upon the execution of this Agreement and shall be effective for twelve (12) months or throughout the completion of any Project started during the twelve (12) month period.

**6.2** This Agreement may be terminated by either party for convenience and without cause upon ten (10) days written notice.

**6.3** McIntosh may immediately suspend, or at McIntosh's option, terminate Services, upon written notice, for non-payment of the invoices for this Agreement or any separate Agreements with McIntosh, by the Client.

**6.4** Compensation due to McIntosh and the Project schedule shall be equitably adjusted if the project is terminated or suspended to provide McIntosh payment for all services rendered and expenses incurred up to the effective date of such termination or suspension, including profit and overhead.

## **ARTICLE 7 CLAIMS AND DISPUTES**

**7.1** The Client shall not withhold payment of invoices for any reason.

### **7.2 Certificate of Merit.**

**7.2.1** Prior to the submission to mediation, arbitration, or litigation, all claims made against McIntosh for negligent errors or omissions shall be certified by two licensed professionals in the State in which the Project is located. Such certification shall represent that the Services of McIntosh on which the claim is based did not conform to the reasonable standard of care in a manner consistent with the standards prevailing for other architects providing similar services under similar circumstances and that the Services were required under the Scope of this Agreement as outlined in Article 1. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifiers opinion that such acts or omissions do not conform to the standard of care.

**7.2.2** The parties agree that no such action shall proceed against until Client has furnished McIntosh the aforementioned certification. Claimant, shall reimburse McIntosh for all defense expenditures incurred by McIntosh prior to the date such certificate is presented, including without limitation, reasonable attorneys', expert's and consultant's fees and compensation for the time McIntosh personnel applied to the defense calculated in accordance with the McIntosh standard rate schedule then in effect.

### **7.3 Mediation.**

**7.3.1** In an effort to resolve any conflicts the Client and McIntosh agree that, subject to ¶ 8.3.2, all disputes between them arising out of or relating to this Agreement, McIntosh's or its consultants' services, or the Project shall be submitted to nonbinding mediation as a condition precedent to arbitration or litigation by either party. Mediation shall be in accordance with the Construction Industry Mediation Rules

of the American Arbitration Association current as of the date of this Agreement. The demand for mediation shall be filed in writing with the other party.

**7.3.2** Any claim, demand or right of recovery asserted by McIntosh for payment for its services, the services of its consultants or reimbursable expenses, including any associated liens or lien rights, including the right of foreclosure, is excluded from the requirement of mediation set forth in ¶ 8.3.1

**7.3.3** All claims, disputes or other matters in question not resolved by mediation shall be decided by litigation, unless otherwise agreed to by both parties to be decided by binding arbitration.

#### **7.4 Arbitration.**

**7.4.1** Arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association current as of the date of this Agreement. The parties shall prepare a joint statement of the issues in dispute for submission with the request for arbitration.

**7.4.2** Rules of Discovery and evidence in arbitration shall be in accordance with the code of civil procedure of the State of Oklahoma.

**7.5** The parties shall each pay 50% of all fees and filing costs of mediation and arbitration.

**7.6** All mutual agreements reached in mediation and final arbitration decisions shall be enforceable in a court of law.

### **ARTICLE 8 MISCELLANEOUS TERMS**

#### **8.1 Indemnifications**

**8.1.1** THE CLIENT SHALL INDEMNIFY, DEFEND, AND HOLD MCINTOSH, ITS AGENTS, EMPLOYEES, MANAGERS, OWNERS, AND CONSULTANTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, INJURIES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES), THAT MAY BE SUFFERED AS A RESULT FROM ANY CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO ACTS, ERRORS OR OMISSIONS RELATED TO THIS PROJECT OR THE WORK TO THE EXTENT THAT THE LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S, EXPERTS, AND CONSULTANT'S FEES) ARE CAUSED IN WHOLE OR IN PART BY THE CLIENT, ITS EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, OR CONTRACTORS.

**8.1.2** THE CLIENT SHALL INDEMNIFY, DEFEND, AND HOLD MCINTOSH, ITS AGENTS, EMPLOYEES, MANAGERS, OWNERS, AND CONSULTANTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, INJURIES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S, EXPERTS, AND CONSULTANT'S FEES), THAT MAY BE SUFFERED AS A RESULT FROM ANY CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO ACTS RISING FROM ANY CERTIFICATIONS WHICH ARE EXECUTED ON BEHALF OF THE CLIENT DURING THE COURSE OF THE PROJECT.

**8.1.3** IF THE CLIENT USES THE INSTRUMENTS OF SERVICE WITHOUT RETAINING MCINTOSH, THE CLIENT RELEASES THE MCINTOSH AND IT'S CONSULTANTS FROM ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER ARISING FROM SUCH USE.

**8.1.4** THE PARTIES EXPRESSLY AGREE THAT MCINTOSH HAS NO DUTY TO DEFEND THE CLIENT FROM AND AGAINST ANY CLAIMS, CAUSES OF ACTION, OR PROCEEDINGS OF ANY KIND.

#### **8.2 Client Authorized or Allowed Deviations.**

**8.2.1** IF THE CLIENT AUTHORIZES OR Allows DEVIATIONS, EITHER RECORDED OR UNRECORDED, FROM THE DOCUMENTS PREPARED BY MCINTOSH OR MCINTOSH'S CONSULTANTS WITHOUT WRITTEN AGREEMENT OF MCINTOSH, THE CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS MCINTOSH AND ITS CONSULTANTS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING ATTORNEY'S, EXPERTS, AND CONSULTANT'S FEES, ARISING OUT OF OR RESULTING IN WHOLE OR IN PART FROM SUCH DEVIATIONS, WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSES ARE CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.

#### **8.3 Right to Cure.**

**8.4** McIntosh shall have the right to cure any alleged errors or omissions in its Instruments of Service prior to the Client taking or authorizing any action to correct such alleged errors or omissions. The Client shall immediately notify McIntosh of any allegations or claims relating to errors or omissions, and McIntosh at its discretion shall have a period of 10 days to propose a plan to remedy the alleged errors and omissions and further shall have a reasonable time to complete the proposed plan. The right to cure is discretionary with McIntosh and shall impose no obligation on McIntosh to cure any particular allegation or claim of errors or omissions.

**8.5** IF THE CLIENT FAILS TO NOTIFY MCINTOSH, FAILS TO ALLOW MCINTOSH TIME TO PROPOSE OR COMPLETE A REMEDY, OR TAKES ANY ACTION TO PREVENT OR IMPEDE MCINTOSH FROM EXERCISING OR EXECUTING ITS RIGHT TO CURE, THE CLIENT SHALL BEAR ALL COSTS OF THE CORRECTIVE ACTION AND SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD MCINTOSH, ITS AGENTS, EMPLOYEES, MANAGERS, OWNERS, AND CONSULTANTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, INJURIES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S, EXPERTS, AND CONSULTANT'S FEES), THAT MAY BE SUFFERED AS A RESULT FROM ANY CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THE ALLEGED ERRORS OR OMISSIONS.

#### **8.6 LIMITATION OF LIABILITY.**

**8.6.1** IN RECOGNITION OF THE RISKS TO MCINTOSH INTRINSIC IN THE PROJECT AND TO ALLOCATE THE RISKS AMONG THE PARTIES BY SPECIFIC AGREEMENT, THE CLIENT AGREES THAT THE TOTAL LIABILITY OF MCINTOSH, MCINTOSH'S

CONSULTANTS, AND THE EMPLOYEES, OWNERS, OFFICERS, AND DIRECTORS OF ANY OF THEM, TO THE CLIENT AND TO ANYONE CLAIMING THROUGH THE CLIENT FOR ALL CLAIMS AND CAUSES OF ACTION OF EVERY KIND, INCLUDING WITHOUT LIMITATION, IN CONTRACT, TORT, NEGLIGENCE, AND STRICT LIABILITY SHALL BE LIMITED IN THE AGGREGATE TO THE GREATER OF \$50,000.00 OR THE COMPENSATION ACTUALLY PAID TO MCINTOSH FOR THE SERVICES OF THIS AGREEMENT. IN NO EVENT SHALL THE TOTAL LIABILITY EXCEED THE AMOUNT OF INSURANCE COVERAGE IN EFFECT. ANY CLAIM BY THE CLIENT AGAINST MCINTOSH SHALL BE FOREVER BARRED AFTER MORE THAN TWO YEARS AFTER THE DATE OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT.

**8.6.2** MCINTOSH SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY FOR THE ACTION OR INACTIONS OF ANY JURISDICTIONAL AGENCIES AND THE CLIENT SHALL AND DOES RELEASE, INDEMNIFY, DEFEND, AND HOLD MCINTOSH, ITS AGENTS, EMPLOYEES, MANAGERS, OWNERS, AND CONSULTANTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, INJURIES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S, EXPERT'S AND CONSULTANT'S FEES), THAT MAY BE SUFFERED AS A RESULT FROM ANY CLAIM ARISING OUT OF OR RELATING IN ANY ACTION OR INACTIONS OF ANY JURISDICTIONAL AGENCIES.

**8.6.3** IF THE CLIENT DOES NOT ENGAGE MCINTOSH TO PERFORM CONSTRUCTION OBSERVATION SERVICES OR DOES NOT NOTIFY MCINTOSH IN A TIMELY MANNER THAT ALLOWS MCINTOSH TO PERFORM SUCH SERVICES (IF WITHIN MCINTOSH'S SCOPE OF SERVICES), THE CLIENT SHALL AND DOES RELEASE, INDEMNIFY, DEFEND, AND HOLD MCINTOSH, ITS AGENTS, EMPLOYEES, MANAGERS, OWNERS, AND CONSULTANTS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, CLAIMS, COSTS, LOSSES, INJURIES, OR EXPENSES (INCLUDING REASONABLE ATTORNEY'S, EXPERT'S AND CONSULTANT'S FEES), THAT MAY BE SUFFERED AS A RESULT FROM ANY CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THE FAILURE OR ALLEGED FAILURE OF THE CONSTRUCTION OF THE PROJECT OR THE CONTRACTORS WORK TO CONFORM TO THE CONSTRUCTION DOCUMENTS.

**8.6.4** NOTHING CONTAINED IN THIS AGREEMENT SHALL CREATE ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

**8.6.5** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED WITHIN THIS AGREEMENT, NO PRESENT OR FUTURE MEMBER, SHAREHOLDER, OFFICER, DIRECTOR, EMPLOYEE, TRUSTEE, OR BENEFICIARY OF MCINTOSH OR OF A MCINTOSH CONSULTANT, SHALL BE PERSONALLY LIABLE, DIRECTLY OR INDIRECTLY, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR PROJECT, OR ANY DOCUMENT, INSTRUMENT, OR CERTIFICATE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY AMENDMENTS OR MODIFICATIONS TO ANY OF THE FOREGOING MADE AT ANY TIME OR TIMES; AND

THE CLIENT AND EACH OF ITS SUCCESSORS AND ASSIGNEES DOES HEREBY WAIVE ANY SUCH PERSONAL LIABILITY ARISING IN ANY MANNER, INCLUDING WITHOUT LIMITATION, BY INDEMNITY, CONTRIBUTION, IN CONTRACT, TORT, NEGLIGENCE, OR STRICT LIABILITY.

#### **8.7 Betterment.**

**8.7.1** McIntosh's responsibility for damages caused by negligent errors and omissions in the Construction Documents prepared by McIntosh and the McIntosh consultants shall not include the costs that would have been incurred by the Client in the absence of the negligent error or omission. In no event will McIntosh be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

#### **8.8 Assignments.**

**8.8.1** The Client shall not assign, sublet, or transfer any of its interest in this Agreement including any interest in the proceeds of the Agreement, any proceeds of claims arising from the Agreement and any claims or causes of actions against McIntosh arising out of the Project without the written consent of McIntosh.

**8.8.2** McIntosh may assign, sublet, or transfer any of its interest in this Agreement upon written notice to the Client.

#### **8.9 Certifications.**

**8.9.1** McIntosh shall not be required to execute any certification that requires knowledge beyond the scope of services or that expands its duties, responsibilities, or liability beyond that provided by this Agreement.

#### **8.10 Purchase Orders.**

**8.11** The Client's issuance of purchase orders and receipt by McIntosh are solely for the Client's accounting and payment convenience. Commencement of Services by McIntosh shall in no way constitute or imply agreement by McIntosh with any terms or conditions contained in the Client's purchase order. McIntosh will reference the purchase order and its number solely for payment and accounting purposes; however, the terms and conditions of the Client's purchase orders shall not supersede the terms and conditions in this Agreement unless specifically agreed to by McIntosh through a written amendment to this Agreement for that purpose.

#### **8.12 Miscellaneous Provisions.**

**8.12.1** The laws of the State of Oklahoma (exclusive of the Oklahoma conflicts of laws) shall apply to interpretations, enforcement, and all disputes arising under this Agreement.

**8.12.2** The mandatory venue for mediation, arbitration, or litigation pertaining to this Agreement and McIntosh's Services shall be in Tulsa, Oklahoma. Further, the exclusive venue for any lawsuit meeting the jurisdictional requirements of 28 U.S.C. § 1332(a) shall be in the United States District Court for the Northern District of Oklahoma.

**8.12.3** 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 Client or McIntosh.

**8.12.4** McIntosh and the McIntosh consultants shall not be responsible for the discovery or presence of hazardous materials in any form and shall not be responsible for removal, or disposal of or exposure of persons to hazardous materials in any form.

**8.12.5** The General Conditions of the Contract for Construction shall be the AIA Document A205 current as of the date of this Agreement. Any changes to the applicable General Conditions must be approved in writing by McIntosh and shall not be binding on McIntosh without the consent of McIntosh in writing.

**8.12.6** McIntosh shall not be required to perform, or have others perform, destructive testing or to investigate hidden, concealed or unknown conditions nor shall it require the starting of any equipment or opening man-hole covers. Observations required of McIntosh under this Agreement are limited to conditions that are reasonably and safely accessible, visible without removal of any visual obstruction, building finishes, surfaces, equipment, or components.

.1 McIntosh personnel do not have the tools necessary and therefore cannot perform the actual limited demolition necessary to gain access to concealed and/or hidden areas. In the event that obtaining hidden or concealed information is required in the scope Client shall provide for the opening up of the concealed and/or hidden areas for McIntosh observation as well as start-up of any existing equipment.

**8.12.7** If ladders or other means of access are needed to access the roof or other areas to be observed it shall be the Clients responsibility to have the necessary items available on site for our use. This is not limited to but may include permanent ladders, extension ladders, free-standing ladders, multipurpose ladders, and/or lifts. It shall also be required that the Client provide additional personnel on the site to help with the safe traversing of any ladder or use of any lift provided for use by McIntosh personnel.

**8.12.8** McIntosh and Client waive consequential damages for claims, disputes or other matters arising out of this Agreement including without limitation all consequential damages due to either party's termination or suspension in accordance with Article 6.

**8.12.9** The use of the words "certify" or "certification" constitutes an expression of professional opinion regarding those facts or findings that are the subject of the certification, and does not constitute a warranty or guarantee, either expressed or implied. Nothing in the issuance of a certification is intended to alter the standard of care ordinarily exercised by a licensed architect.

**8.12.10** Nothing contained in this Agreement nor, any action by McIntosh, shall impose a fiduciary duty on McIntosh nor create a fiduciary relationship between McIntosh and the Client or between McIntosh and any third party.

**8.12.11** The Agreement may be executed in multiple counterparts. Facsimile and scanned copies of this signed and dated Agreement shall be considered as valid as originals of the Agreement.

**8.12.12** Any decision or failure by McIntosh to exercise any right or remedy set forth in the Agreement or these Standard Terms and Conditions shall not act as a waiver of any other right or remedy afforded McIntosh, nor shall it act to waive any right or remedy afforded McIntosh for a future event, breach or non-performance by Client.

**8.12.13** The Parties acknowledge that they are sophisticated consumers and providers of the services described herein; that they have had the opportunity to have the Agreement reviewed by counsel of its choice; and that

the Agreement was entered into freely and at arms' length. Therefore, the provisions of the Agreement shall not be strictly interpreted against any party hereto, regardless of who drafted the Agreement.



## McIntosh

### STANDARD RATE SCHEDULE

ACCESSIBILITY CONSULTING SERVICES

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The following standard rate charges have been established for all services and Work of the Architect in accordance with the Agreement for Services. Consultant rates will be per its standard rate schedule.

#### Hourly Rates

Principals .....	\$325.00
Programmers .....	\$225.00
Project Managers .....	\$200.00
Associates .....	\$150.00
All Other Staff .....	\$125.00

#### Out of Town Travel Rates

Out of Town Travel - Experts (labor only) .....	daily rate \$3,000/ day
Out of Town Travel - Principals and/or Directors (labor only) .....	daily rate \$2,500/ day
Out of Town Travel - Certified Inspectors (labor only) .....	daily rate \$2,250/ day
Daily Per Diem (excluding transportation, lodging, rental car, and parking) .....	\$95.00 per day
Mileage rate .....	\$1.00 per mile

#### Reproduction Rates

Plots .....	\$10.50 each
Bond Plots .....	\$13.50 each
Vellum Plots .....	
Laser Copies .....	\$0.25 each
Small B&W .....	\$0.50 each
Large B&W .....	\$0.75 each
Small Color .....	\$1.50 each
Large Color .....	

#### Miscellaneous Rates

Packaging for shipping .....	\$5.00 each
CD Burning .....	\$15.00 per CD

## Travel and Other Reimbursable Expenses

Expenses (other than Travel)	1.20 x cost
Travel (Non-fixed)	1.20 x cost
Travel (Fixed)	Based on number of nights.
	<b>14 Day Notice or less</b>
0 Nights	\$1,250.00
1 Night	\$1,700.00
2 Nights	\$2,150.00
3 Nights	\$2,600.00
4 Nights	\$3,050.00
5 Nights	\$3,500.00
6 Nights	\$3,950.00
7 Nights	\$4,170.00
8 Nights	\$4,540.00
9 Night	\$4,970.00
10 Nights	\$5,400.00
	<b>&gt;14 Day Notice</b>
	\$1,010.00
	\$1,460.00
	\$1,910.00
	\$2,360.00
	\$2,810.00
	\$3,260.00
	\$3,710.00
	\$3,930.00
	\$4,300.00
	\$5,730.00
	\$5,160.00

The above rates are subject to periodic review and revision.

