

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Northern Illinois Gas Company )  
d/b/a Nicor Gas Company )  
 ) Docket No. 08-0363  
Proposed general increase in rates, and )  
revisions to other terms and conditions )  
of service )

Surrebuttal Testimony of

**ROCCO J. D'ALESSANDRO**

Executive Vice President of Operations  
Nicor Gas Company

November 5, 2008

**OFFICIAL FILE**

I.C.C. DOCKET NO. 08-0363  
NICOR GAS Exhibit No. 37.0-37.9  
Witness \_\_\_\_\_  
Date 11/17/08 Reporter TC

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1 **I. INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. Rocco J. D'Alessandro, Nicor Gas Company ("Nicor Gas" or the "Company"), 1844  
4 Ferry Road, Naperville, Illinois 60563.

5 **Q. Are you the same Rocco J. D'Alessandro who submitted direct and rebuttal  
6 testimony on behalf of Nicor Gas in this Docket?**

7 A. Yes.

8 **II. PURPOSE AND SUMMARY**

9 **Q. What is the purpose of your surrebuttal testimony?**

10 A. The purpose of my surrebuttal testimony is to respond to the rebuttal testimony of Illinois  
11 Commerce Commission (the "Commission" or "ICC") Staff witnesses Mark Maple (Staff  
12 Ex. 23.0), Mike Ostrander (Staff Ex. 17.0), and Office of the Illinois Attorney General  
13 ("AG") and Citizens Utility Board ("CUB") (collectively "AG/CUB") witness David  
14 Effron (AG/CUB Ex. 4.0).

15 **Q. Please summarize your conclusions.**

16 A. I conclude the following:

- 17 • The Northern Region Reporting Center ("NRRC") is properly included in the  
18 Company's rate base for the 2009 test year. This project is needed to meet the  
19 future operational requirements of the Company and the needs of our customers.  
20 Nicor Gas' Executive Committee and Board of Directors have each approved the  
21 construction of the NRRC. Since filing Rebuttal testimony, the Company has  
22 acquired the property in Des Plaines, Illinois and executed the agreement with a  
23 builder to construct the NRRC. It will be completed and in service by the end of  
24 2009. For these reasons, Staff witness Maple's continued claim to remove the  
25 NRRC from rate base is wrong.

- 26 • Upon consideration of the more immediate need for the NRRC and its increase in  
27 cost from original estimates, the Company has decided to postpone the  
28 construction of the Central Distribution Center (“CDC”). Accordingly, Nicor Gas  
29 is withdrawing the CDC from the 2009 test year rate base and from consideration  
30 in this proceeding. As such, the Company will withdraw the costs of the CDC  
31 from rate base, while including the updated costs for the NRRC.
- 32 • Nicor Gas’ 2008 and 2009 forecast of plant additions correctly reflects the  
33 Company’s planned plant additions through the end of the test year. The facts  
34 show that using Staff witness Ostrander’s suggested approach, but using correct  
35 data, the Company’s budgeted capital expenditures have been accurate to within  
36 one-half of one percent. Accordingly, the suggested disallowances to plant  
37 additions proposed by Staff witness Ostrander should not be accepted.
- 38 • AG/CUB witness Effron’s proposed operating adjustment related to  
39 payroll/headcount is wrong and should be rejected. As discussed in detail below,  
40 Mr. Effron’s analysis is contrary to the facts and misapprehends the reasons for  
41 the increases in certain Accounts.

42 **III. ATTACHMENTS TO SURREBUTTAL TESTIMONY**

43 **Q. Please identify the exhibit(s) attached to your surrebuttal testimony.**

44 **A.** Attached to my testimony are the following exhibits:

- 45 • Nicor Gas Exhibit 37.1 is a Park Ridge City Council Agenda cover memorandum  
46 from August 18, 2008 “Approval Nicor Lease”.
- 47 • Nicor Gas Exhibit 37.2 is an aerial photo of the current Park Ridge site.
- 48 • Nicor Gas Exhibit 37.3 is a photo of the Company’s Schaumburg, Illinois,  
49 facility, which is similar to the planned NRRC for Des Plaines, Illinois.
- 50 • Nicor Gas Exhibit 37.4 is a copy of the design/build contract for the NRRC.
- 51 • Nicor Gas Exhibit 37.5 is the updated plan for the building to be constructed on  
52 the Des Plaines site.
- 53 • Nicor Gas Exhibit 37.6 is the Plat Survey of the Park Ridge site.
- 54 • Nicor Gas Exhibit 37.7 is a copy of the Company’s data request response to  
55 MEM 7.09.
- 56 • Nicor Gas Exhibit 37.8 is a chart showing the correction to Mr. Ostrander’s 4 year  
57 capital budget analysis, as well as a corrected 5-year capital budget analysis.

58 • Nicor Gas Exhibit 37.9 is a chart showing the impact of the 4 and 5 year capital  
59 budget analysis adjustments on proposed plant additions, utilizing Staff witness  
60 Ostrander's methodology.

61 **IV. RESPONSE TO STAFF WITNESS MAPLE'S REBUTTAL TESTIMONY**

62 **A. NRRC**

63 **Q. Mr. Maple continues to object to including the NRRC in rate base for the 2009 test**  
64 **year. (Maple Reb., Staff Ex. 23.0, 2:16-12:209). Is his analysis correct?**

65 A. No. Mr. Maple reiterates his erroneous claims that the NRRC is not needed, that it will  
66 not be completed to be in use by the end of 2009, and that the project is uneconomical.  
67 None of these claims are correct. As explained below, the NRRC is properly included in  
68 rate base for the test year.

69 **Q. Mr. Maple continues to assert that Section 9-212 of the Public Utilities Act ("Act")**  
70 **applies when evaluating whether the NRRC is used and useful. (Maple Reb., Staff**  
71 **Ex. 23.0, 3:35-5:72). How do you respond?**

72 A. I have been advised by counsel that Mr. Maple continues to apply the wrong legal  
73 standard for the used and useful evaluation. In this regard his reliance on, and  
74 interpretation of, the Commission's Order in Docket No. 91-0586 is patently incorrect.  
75 (Maple Reb., Staff Ex. 23.0, 3:40-4:60). Nowhere within the Commission's Order in that  
76 docket does the Commission expressly or implicitly apply Section 9-212 of the Act to  
77 proposed capital expenditures. *Peoples Gas Light & Coke Co.*, Docket No. 91-0586,  
78 Order at 7-9 (Oct. 6, 1992). The Company will address this issue in detail in its briefs.

79 **Q. Mr. Maple continues to assert that the Company does not need the NRRC in order**  
80 **to meet its operational needs. (Maple Reb., Staff Ex. 23.0, 9:160-12:209). Is he**  
81 **correct?**

82 A. No. As described in my earlier testimony, the Company has evaluated its operations and  
83 determined that it must replace its existing facility in Park Ridge, Illinois, and its facility  
84 in Niles, Illinois. The proposed NRRC will combine these two operations into one  
85 location, at a site that is owned by the Company, and with sufficient room to house its  
86 facilities and vehicles. Mr. Maple simply chooses to ignore the Company's assessment  
87 that the current Park Ridge location is not adequate to support the operational  
88 requirements in the region. Another flaw in Mr. Maple's position is that he fails  
89 completely to address the fact that Nicor Gas will combine two existing facilities into one  
90 location. Moreover, as described in detail below, the Company has moved forward with  
91 the project and has purchased the property and executed a design/build agreement with a  
92 builder. These actions have been approved by Nicor Gas' Executive Committee, as well  
93 as its Board of Directors.

94 **Q. With regard to the current lease for the Park Ridge facility, Mr. Maple claims that**  
95 **the Company's concerns regarding the lease are "ridiculous." (Maple Reb., Staff**  
96 **Ex. 23.0, 10:173-75). How do you respond to this claim?**

97 A. Mr. Maple's conclusion is wrong. The Company never intended for the current Park  
98 Ridge location to be permanent. Moreover, the Company entered into a short-term lease  
99 to provide more time to finalize the work to develop the NRRC. As such, the length of  
100 the current lease is of no consequence to the City of Park Ridge's (the "City") ability to  
101 terminate the lease. Finally, Mr. Maple's citation to a Data Request Response indicating

102 that I had no reason to believe that the City would terminate the lease is likewise of no  
103 consequence. The fact is that the City retains the right to terminate the lease on short  
104 notice, which would require the Company find a new location on short notice, likely  
105 under less than ideal economic terms and operational circumstances.

106 In short, I cannot speculate as to the City's intentions concerning the lease or the  
107 property subject to the lease. In contrast, Mr. Maple's conclusion is based entirely on  
108 speculation, as he has presented no evidence indicating that the City will not exercise its  
109 right to terminate the lease. In fact, a review of the attached Nicor Gas Exhibit 37.1 (a  
110 Park Ridge City Council Agenda Cover Memorandum on August 18, 2008 "Approval  
111 Nicor Lease" meeting) states that "[t]he City asked Nicor to shorten the clause after six  
112 (6) months into the terms of the contract, with six (6) months notice." In any event, the  
113 current site has proven to be inadequate to meet the ongoing needs of the Company and  
114 thus looking at continuing a lease at this location is not a reasonable option.

115 **Q. Mr. Maple states that the Company has not explained how the existing Park Ridge**  
116 **facility is inadequate. (Maple Reb., Staff Ex. 23.0, 3:31-32). Is he correct?**

117 A. No. The Company has provided testimony and various Data Request Responses  
118 explaining the need for the proposed NRRC.

119 **Q. Can you explain, again, why the new NRRC is needed?**

120 A. There are several reasons why the NRRC is needed. First, the current Park Ridge site is  
121 inadequate to support the Company's operations in that area. As described in prior  
122 testimony, the site has insufficient space to safely maneuver and house Company vehicles  
123 assigned to the area. Moreover, being located in a residential area, the site offers only

124 limited ingress/egress for Company trucks. Additionally, the size of the Park Ridge site  
125 is only 1.77 acres, with 13,600 square feet for offices, locker rooms, a garage and storage  
126 areas. Another approximately 14,000 square feet consists mainly of irregularly shaped  
127 covered parking areas. (See attached Nicor Gas Ex. 37.2, which is an aerial photo of the  
128 Park Ridge site). Given the inadequate space at the Park Ridge site, the Company  
129 currently bases four crews responsible for carrying out work in the region at locations  
130 outside of the Northern Region.

131 In contrast to the Park Ridge site, the Des Plaines site is better suited to  
132 accommodate both the planned building and the vehicles which support Northern Region  
133 operations. This difference was reflected in my rebuttal testimony, in Nicor Gas  
134 Exhibit 18.3, page 1 of 2, where the site plan for the Des Plaines site was presented. To  
135 further illustrate the difference, I now have attached an aerial photo of our Schaumburg  
136 facility, which presents a site similar to our planned Des Plaines site. (See Nicor Gas  
137 Ex. 37.3). It is readily evident when comparing the photos of the Park Ridge site and the  
138 Schaumburg site that there is far more room to maneuver and park vehicles on the  
139 Schaumburg site. The configuration of the Des Plaines site will offer similar room for  
140 our vehicles.

141 The second reason for the NRRC is to combine our Niles, Illinois operations with  
142 our Park Ridge operations. At present, our Niles facility also is subject to a lease  
143 agreement that will be expiring shortly. Rather than continue to lease two locations  
144 which do not meet the Company's future needs, the Company seeks to secure a more  
145 permanent site that will consolidate the operations at these two facilities. The  
146 consolidated facility will provide increased flexibility of staff, expanded supervision of

147 field operations and improve the overall efficiency of operations in the region. The site  
148 of the proposed NRRC is of sufficient size to meet the future operational requirements of  
149 both the Park Ridge and Niles operations.

150 **Q. Do you have any other comments concerning the Company's need for the NRRC?**

151 A. Yes. Nicor Gas always evaluates carefully its capital investments. The Company has a  
152 proven history of making prudent and reasonable investments necessary to meet its  
153 current and future obligations to provide cost-effective service to our customers. As a  
154 consequence, Nicor Gas is the low cost provider of natural gas distribution service among  
155 major utilities in Illinois and, in fact, is the *lowest* cost provider of such service among  
156 51 utilities in the American Gas Association's 2006 evaluation of gas distribution  
157 companies.

158 In this instance, Nicor Gas' Executive Committee, as well as the Company's  
159 Board of Directors, each has determined that there is a need for the NRRC. Both groups  
160 have approved the purchase the Des Plaines, Illinois property for the NRRC and  
161 construction of the facility. The Company closed on the purchase of Des Plaines  
162 property on October 30, 2008. On October 30, 2008, the Company also executed a final  
163 agreement with its developer to design and build the NRRC facility. The design/build  
164 agreement, which is attached as Nicor Gas Exhibit 37.4, provides for completion of the  
165 building by October 1, 2009. In fact, the Company already has started construction  
166 activity at the Des Plaines site.

167 Notwithstanding the Company's operating history, its management's  
168 determination that the NRRC is needed to meet future operational needs, and the actions

169 of the Executive Committee and Board of Directors, Mr. Maple claims the facility is not  
170 needed. Indeed, he states:

171 In fact, all of the current facilities are in use today and *are quite*  
172 *adequate* in meeting the needs of the Company and the customers.

173 (Maple Reb., Staff Ex. 23.0, 3:33-34) (emphasis added). This statement, however,  
174 appears to be based upon nothing more than conjecture. Mr. Maple has provided no  
175 evidence that he has even visited either the current Park Ridge or Niles locations to  
176 observe and assess their operational capabilities. Moreover, he has provided no  
177 information analyzing the Company's current operations at these facilities to demonstrate  
178 that they are adequate for future demands. Finally, he has offered no information to  
179 support his conclusion that the Company's existing facilities are adequate to meet the  
180 needs of customers.

181 In summary, the need for the NRRC is based upon the Company's current and  
182 future operational requirements, informed by our operating experience and history of  
183 being the low-cost provider of gas distribution service.

184 **Q. Mr. Maple states that the "most cost effective option is to simply continue to lease**  
185 **the current facility [Park Ridge]." (Maple Reb., Staff Ex. 23.0, 11:184-85). Does**  
186 **Mr. Maple apply the appropriate standard to assess this project?**

187 A. No. The Company is under an obligation to provide safe and reliable gas distribution  
188 service to its customers. To meet this obligation, the Company must make investments in  
189 facilities. This is not merely an exercise in economics. The Company has evaluated its  
190 operational needs and has determined that the Park Ridge site is not adequate to meet its  
191 future needs. The Company has been diligent in its efforts to seek out the best available

192 option for meeting those needs. Consequently, contrary to Mr. Maple's claim, continuing  
193 to lease the Park Ridge facility is not an option.

194 **Q. Mr. Maple also suggests that Nicor Gas is proposing to build a facility larger than**  
195 **what is needed for the NRRC. (Maple Reb., Staff Ex. 23.0, 12:203-09). Is he**  
196 **correct?**

197 A. No. Mr. Maple's claim is based on his flawed interpretation of the floor plan that was  
198 attached to my rebuttal testimony, Nicor Gas Exhibit 18.3. To assume that that the  
199 phrase "future office area" means that the space will be vacant for "an indeterminate  
200 period of time" defies logic and reason—particularly when Mr. Maple had the  
201 opportunity to ask the Company questions about Nicor Gas Exhibit 18.3, but chose not to  
202 do so. In fact, the Company has further revised the design of the facilities for the NRRC  
203 so as to *increase* the size of the building in order to meet our operational needs. (See  
204 Nicor Gas Ex. 37.5). First, it was necessary to add additional space to the main building  
205 due to the elimination of an outer building for material storage that was not acceptable in  
206 the city of Des Plaines. Also, a second floor was added first to minimize the footprint,  
207 accommodate the needed space for locker rooms and meetings rooms and hold  
208 construction costs down. The current design has 37% of the total space for office, locker  
209 room, meeting rooms and common areas the remaining 63% is for material and  
210 equipment storage and shop area. The current Park Ridge site has approximately 32,000  
211 square feet of open parking and drive space available. (See Nicor Gas Ex. 37.6 – Plat  
212 Survey). In contrast, the Des Plaines site will have approximately 150,000 square feet to  
213 accommodate open parking and drive space.

214 **Q. Mr. Maple continues to claim that Nicor Gas will not finish the NRRC before the**  
215 **end of the 2009 test year. (Maple Reb., Staff Ex. 23.0, 4:64-66). Is he correct?**

216 A. No. The NRRC is scheduled to be completed and in service before the end of 2009. The  
217 design/build contract reflects a completion date of October 1, 2009. The schedule for  
218 completion is consistent with our experience, and with our understanding of the builder's  
219 performance for similar structures.

220 **Q. Mr. Maple also is critical of the fact that the cost of the NRRC has increased.**  
221 **(Maple Reb., Staff Ex. 23.0, 11:186-12:200). Please explain the reasons for the cost**  
222 **increase.**

223 A. The original cost estimate for the proposed NRRC was based on a number of facts that  
224 are no longer applicable. The original estimate was developed based on a site in Niles,  
225 Illinois. However, the Company had to select a new site for the NRRC (Des Plaines),  
226 because in conducting our due diligence for the original site, it became apparent that the  
227 site was not suitable. The Des Plaines site is better suited for our operations. Second, the  
228 cost to design and build the building is higher than originally forecasted. These costs,  
229 however, reflect the current market to acquire the Des Plaines property and to construct  
230 the NRRC facility. We provided all of the details on the budget in response to data  
231 request MEM 7.09. The Company's response to MEM 7.09 is attached as Nicor Gas  
232 Exhibit 37.7.

233 **B. CDC**

234 **Q. You have indicated that the Company has revised its position concerning the CDC.**  
235 **Would you please explain the Company's revised position?**

236 A. Yes. The Company has a real and pressing need to construct the NRRC, and that project  
237 is under way. The Company also recognizes that the cost for the NRRC has increased  
238 from \$5.9 million to \$12.5 million. Given the increased cost of the NRRC and current  
239 economic conditions, the Company has decided to postpone development of the CDC  
240 during the 2009 test year. As such, the Company is withdrawing the CDC from  
241 consideration in this rate case proceeding.

242 **Q. While the Company is withdrawing the CDC from consideration in this proceeding,**  
243 **do you have any comments regarding Mr. Maple's testimony concerning the CDC?**

244 A. Yes. Mr. Maple claims that in my rebuttal testimony I was "deliberately misleading" the  
245 Commission concerning space at the Company's existing meter shop site. (Maple Reb.,  
246 Staff Ex. 23.0., 5:81-83).

247 Let me be clear: *nothing* could be further from the truth. Mr. Maple's "belief" is  
248 premised on an entirely incorrect reading of my rebuttal testimony. His accusation is  
249 premised on one bullet-point, where I stated "[s]ome meters currently must be stored  
250 outside due to lack of available indoor space. As our natural gas system continues to  
251 grow, more space will be required to store new and used meters." (D'Alessandro Reb.,  
252 Nicor Gas Ex. 18.0, 7:163-165). Plain reading of my testimony shows that I presented  
253 numerous reasons why the Company does not have adequate space at existing facilities.  
254 (*Id.*, 7:147-165). As for the meter equipment, Mr. Maple himself acknowledges that the  
255 Company stores meters outside. (Maple Reb., Staff Ex. 23.0, 6:90-91). The simple fact  
256 is that the Company requires more space for a number of reasons, including space for  
257 meters. Unfortunately, Mr. Maple ascribes an intent to my rebuttal testimony that is  
258 unfounded and incorrect.

259 **C. IMPACT OF COMPANY REVISIONS TO NRRC AND CDC PROPOSALS**

260 **Q. Earlier in this testimony you stated that the Company was withdrawing the CDC**  
261 **from consideration in this proceeding, while seeking to include the full cost of the**  
262 **NRRC in the 2009 test year rate base. What is the net impact of these proposals?**

263 A. The Company originally proposed to include both the NRRC and CDC in the test year  
264 rate base. The original proposed cost of the NRRC and the CDC were \$5.9 million and  
265 \$13 million, respectively. Based upon the increased costs of the NRRC, now totaling  
266 \$12.5 million, and the elimination of the CDC, Nicor Gas is proposing a net *decrease* in  
267 its capital expenditures of \$6.4 million related to these two projects. Given the  
268 Company's use of an average rate base for the test year, this equates to a net decrease of  
269 approximately \$3.2 million in the test year rate base. Company witness Gorenz testifies  
270 to the proposed revenue requirement decrease related to this adjustment. (Gorenz Sur.,  
271 Nicor Gas Ex. 45.0).

272 **V. RESPONSE TO CERTAIN RATE BASE ADJUSTMENTS OF STAFF WITNESS**  
273 **OSTRANDER**

274 **Q. Mr. Ostrander continues to propose an adjustment to reduce proposed plant**  
275 **additions by 2.87% for 2008 and 2009. (Ostrander Reb., Staff Ex. 17.0, 4:70-80). Is**  
276 **his 2.87% figure correct?**

277 A. No. Mr. Ostrander's 2.87% adjustment is not correct for the following reasons:  
278 (1) In my rebuttal testimony I pointed to the fact that the Company's plant addition  
279 budgeting was remarkably accurate. Upon reviewing Mr. Ostrander's analysis further  
280 (Ostrander Reb., Staff Ex. 17.0, Sch. 17.02, p. 3), it appears that he has used an incorrect  
281 figure for 2004, which has a dramatic impact on the results of his analysis. In particular,

282 Mr. Ostrander uses a 2004 mid-year capital expenditure budget instead of the original  
283 2004 capital expenditure budget of \$165,179,000. This is inconsistent with his approach  
284 for 2005 – 2007, where he is comparing actual capital expenditures to the original budget  
285 for each respective year. When comparing 2004 actual spend to the original budget, the  
286 Company underestimated its 2004 original budget by approximately \$10,000,000 or  
287 about 6%. Applying this corrected 2004 variance to Mr. Ostrander's four year average  
288 yields a variance between budgeted and actual capital expenditures of only 0.52%, not  
289 2.87%. The recalculation of the variance percentages using Mr. Ostrander's analysis is  
290 reflected on Nicor Gas Exhibit 37.8.

291 (2) In addition, Mr. Ostrander chooses a four-year historical analysis on which to base his  
292 conclusions. He does not, however, explain his rationale for choosing a four-year period.  
293 If, instead, a five-year history is applied to his methodologies, the Company's variance  
294 between budgeted and actual capital expenditures would indicate that the Company  
295 actually under-estimated its budgeted capital expenditures by 1.60%. (See Nicor Gas  
296 Ex. 37.9). The impact of these alternatives to the Company's proposed test year plant  
297 additions is detailed on Nicor Gas Exhibit 37.9.

298 **Q. What is the impact of the reduction to the 2008/2009 plant additions budgets for the**  
299 **increased cost of the NRRC and the removal of the CDC project?**

300 A. The result is that the Company's forecasted plant additions will be at 99% of original  
301 budget. By reflecting this adjustment in the rate base and revenue requirement (as the  
302 Company has proposed) means any further adjustment, as proposed by Mr. Ostrander  
303 (corrected – 0.52%) would be a double count and should be ignored.

304 **Q. Should the Commission adopt Mr. Ostrander's proposed adjustment to 2008 and**  
305 **2009 plant additions, as revised above?**

306 A. No. The Company's budgets for 2008 and 2009 plant additions are very accurate and  
307 should be adopted. In this regard, I note that AG/CUB witness Effron no longer opposes  
308 the Company's proposed plant additions. (Effron Reb., AG/CUB Ex. 4.0, 1:22-2:7).

309 If, however, the Commission determines that an adjustment is appropriate, then  
310 the Commission should adopt Mr. Ostrander's proposed adjustment, revised to reflect  
311 adjustments set forth above, and adjusted for the reduction of \$6.4 million related to the  
312 NRRC and CDC discussed earlier in my testimony.

313 **VI. RESPONSE TO AG/CUB WITNESS EFFRON'S PROPOSED ADJUSTMENT TO**  
314 **PAYROLL/HEADCOUNT**

315 **Q. Mr. Effron continues to propose an adjustment to reduce the Company's test year**  
316 **Payroll Expense. (Effron Reb., AG/CUB Ex. 4.0, 9:5-10:19). What is your response**  
317 **to his proposal?**

318 A. For the reasons set forth in my Rebuttal Testimony, Mr. Effron's payroll expense  
319 adjustment should be rejected. Nothing in his rebuttal testimony reasonably supports  
320 such an adjustment. In fact, Staff witness Hathhorn disagrees with Mr. Effron's proposal  
321 on this issue. (Hathhorn Reb., Staff Ex. 15.0, 12:254-62).

322 I also would observe that Mr. Effron has reduced the size of his proposed  
323 adjustment to payroll expense to reflect the fact that the Company has increased its  
324 headcount during 2008. (Effron Reb., AG/CUB Ex. 4.0, 10:8-19). Since filing my  
325 Rebuttal Testimony, the Company has continued to increase its headcount, consistent

326 with its forecast. As of October 31, 2008, the Company's headcount has increased by an  
327 additional 22 employees, or within 45 of its budgeted amount.

328 Mr. Effron states in his rebuttal testimony that he is not proposing to freeze the  
329 employee complement at the 2008 level. (Effron Reb., AG/CUB Ex. 4.0, 9:8-12).  
330 However, Mr. Effron's proposed adjustment would reduce average 2009 test year  
331 employee levels to 2,224. The Company's actual employee levels at October 31, 2008  
332 are 2,230. Therefore, Mr. Effron is not just freezing the employee complement at 2008  
333 levels, he is actually proposing a reduction to the Company's actual 2008 employee  
334 levels by the end of 2009 without identifying which positions he feels are unwarranted or  
335 providing a basis for why these positions should be eliminated.

336 **Q. Mr. Effron claims that although the Company is incurring unbudgeted overtime**  
337 **and contractor expenses to accomplish the workload related to employee vacancies,**  
338 **this is an invalid argument to opposing his adjustment. (Effron Reb., AG/CUB**  
339 **Ex. 4.0, 9:8-19). Is he correct?**

340 **A.** No. Mr. Effron's reduction to the Company's test year payroll expense is premised upon  
341 a comparison of 2008 actual headcount versus budgeted headcount. What Mr. Effron  
342 fails to acknowledge is that although headcount is not at budgeted levels, the Company's  
343 workload remains the same. The Company is incurring unbudgeted overtime and  
344 contractor expenses in 2008 in order to accomplish the current workload. Therefore,  
345 Mr. Effron would be incorrect in reducing the Company's proposed 2009 payroll  
346 expense, based solely on a 2008 headcount variance, without adjusting for the  
347 unbudgeted overtime and contractor expenses that the Company is incurring in 2008.

348 **Q. Is any adjustment to the Company's test year payroll expense warranted?**

349 A. No adjustment to the test year payroll expense is warranted. However, if the Commission  
350 somehow adopts Mr. Effron's proposed adjustment, his adjustment should be further  
351 reduced to reflect the additional increase in employee headcount in 2008, as well as the  
352 unbudgeted overtime and contractor expenses that the Company is incurring as a result of  
353 this lower headcount.

354 **VII. CONCLUSION**

355 **Q. Does this conclude your surrebuttal testimony?**

356 A. Yes.

## City Council Agenda Cover Memorandum

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Meeting Date: August 18, 2008

Item Title: Approval of the Nicor Lease for 1200 Elm Street

Action Requested:

- Approval
- For discussion
- Feedback requested
- For your information

Staff Contact: Wayne Zingsheim

Phone Number: X247

Email Address:

Background:

Nicor Gas has leased the City owned property at 1200 West Elm Street, the former Public Works Service Center, since 2000. The original intent of this lease was to provide the City with revenue while a decision was made as to the optimal use of this site.

The current lease expires on October 31, 2008. Nicor Gas has approached the City with a request for a new three (3) year lease, with the rent increasing 3% per year for the term of the lease. All other terms of the 2005 lease would generally remain in effect except for the termination clause. The City has asked Nicor to shorten the clause after six (6) months into the term of the contract, with six (6) months notice.

Nicor currently pays \$8.82 per square foot or \$238,140 per year rent, a 60% increase over the original contract. Nicor performs all capital repairs on the property and pays approximately \$38,000 in property taxes.

Recommendation:

Move the City Council direct the Mayor to enter into a three year lease agreement for 1200 Elm Street with Nicor Gas Company of 1844 Ferry Road, Naperville, Illinois 60563, in the amount of \$245,284 beginning at the commencement of the agreement and increasing as provided for by the contract.

Budget Implications:

- Does Action Require an Expenditure of Funds:  Yes  No  
If Yes, Total Cost:  
If Yes, is this a Budgeted Item:  Yes  No

Attachments:

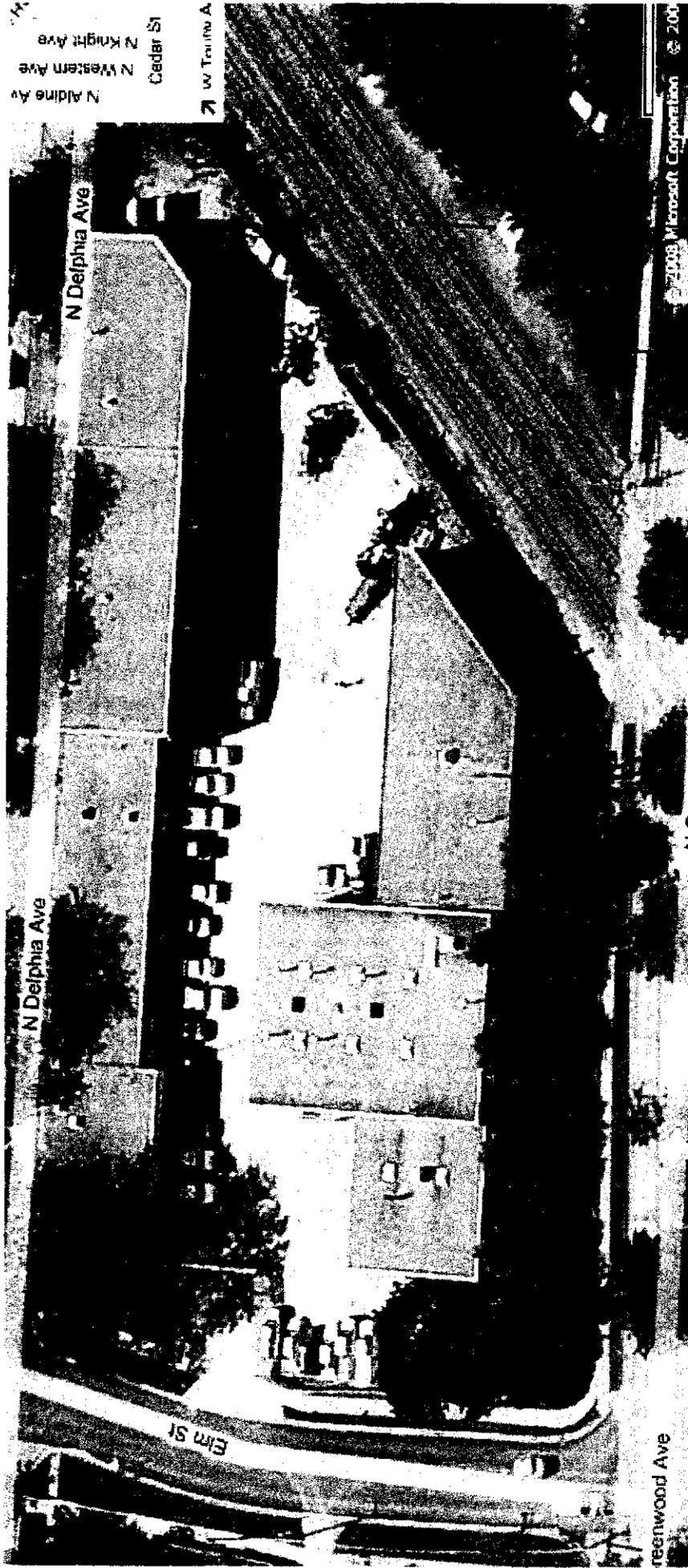
- None

1200 Elm Street, Park Ridge

Looking West

Offices, Locker Rooms

Covered storage



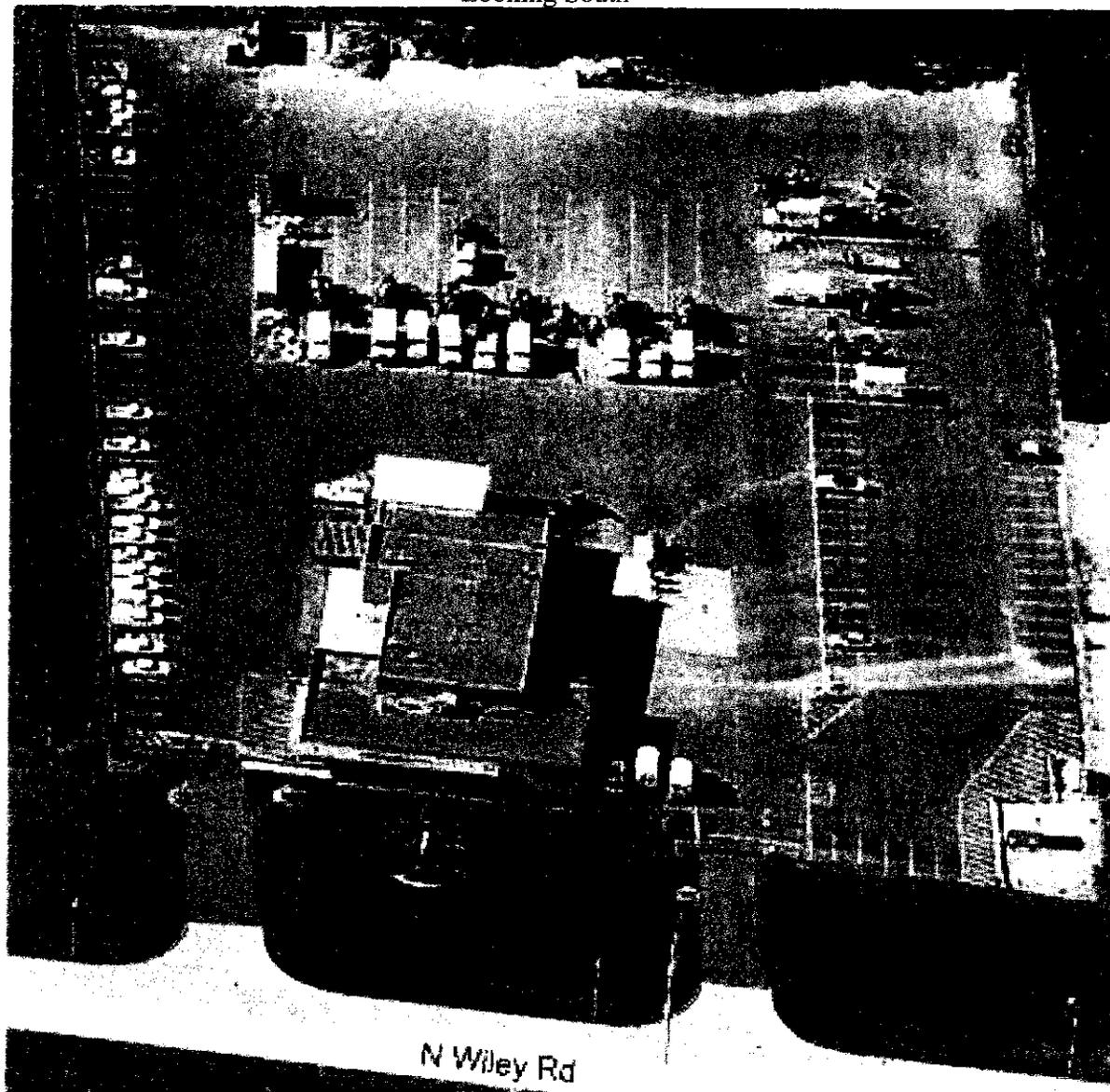
Garage, storage

Covered storage

Covered storage

1011 Wiley Road  
Schaumburg, Illinois

Looking South



 **AIA** Document A141™ – 2004

**Standard Form of Agreement Between Owner and Design-Builder**

AGREEMENT made as of the 30th day of Oct. in the year of 2008

BETWEEN the Owner:  
(Name, address and other information)

Northern Illinois Gas Company d/b/a Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois

and the Design-Builder:  
(Name, address and other information)

Panattoni Construction, Inc.  
8775 Folsom Blvd., Suite 100  
Sacramento, California

And

Panattoni Construction, Inc.  
6250 N. River Road, Suite 4050  
Rosemont, Illinois 60018

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

Design and construction of Regional Reporting Center on approximately 4.54 acres of vacant property located at 1665 Birchwood Avenue, Des Plaines, Illinois.

Design/Builder's Architect is Partners In Design, Inc., Riverwoods, Illinois, License No. 184002178 (hereinafter "Architect")

Design/Builder's Engineer is Spaceco, Inc., IL License No. 184-001157 (hereinafter "Engineer," although Architect and Engineer may be referred to collectively as Architect whenever design services or duties of the Architect and Engineer overlap for the purposes of this Agreement).

The Owner and Design-Builder agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

TABLE OF ARTICLES

- 1 THE DESIGN-BUILD DOCUMENTS
- 2 WORK OF THIS AGREEMENT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 MISCELLANEOUS PROVISIONS
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

- A TERMS AND CONDITIONS
- B DETERMINATION OF THE COST OF THE WORK
- C INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement and, upon approval by Owner as provided herein, the construction documents identified in Ex. A, Art. 1.1.1. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated design and construction agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 Nothing contained in the Design-Build Documents shall create a contractual relationship between the Owner and any third party; however, it is understood and agreed that the Owner is an intended third-party beneficiary of all contracts for design or engineering services, all subcontracts, purchase orders, and other agreements between the Design-Builder and third parties. The Design-Builder shall incorporate this paragraph and this Agreement into its respective agreements with third parties concerning the Project, including but not limited to agreements with the Architect and the Engineer identified herein.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

Init.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

*(Paragraphs deleted)*

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

3.2.1 Design-Builder acknowledges that Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time and that the Owner will enter into agreements and make commitments to utilize, rent, lease or demise all or part of the premises where the Work is to be completed, all based on Contractor's agreement to achieve Substantial Completion of the Work within the time provided in Art. 3.3 below. Design-Builder further acknowledges and agrees that if Design-Builder fails to achieve Substantial Completion of the Work within the time provided in Art. 3.3 below, Owner will sustain extensive disruption to its business, damages and loss as a result, the exact amount of which are difficult or impossible to quantify at the time of execution of this Agreement. As an additional inducement to Owner to enter into this Agreement, Owner and Design-Builder therefore agree as follows:

3.2.1.1 If the Design-Builder fails to achieve Substantial Completion of the Work within the time provided in Art. 3.3 below, Owner shall be entitled to retain or recover from Design-Builder, as liquidated damages and not as a penalty, the following per diem amounts, commencing on the first day following expiration of the Contract Time and continuing until actual achievement of Substantial Completion. Such liquidated damages are agreed to be a reasonable estimate at the time of this Agreement of the damages the Owner will incur as a result of Design-Builder's delayed achievement of Substantial Completion: For the first 30 days following the date for Substantial Completion, \$0.00 (Zero Dollars) per day until the date on which Design-Builder achieves Substantial Completion; for days 31 through 60 following the date for Substantial Completion, \$1,000 (One Thousand Dollars) per day until the date on which Design-Builder achieves Substantial Completion; for days 61 through achievement of Substantial Completion, \$2,000 (Two Thousand Dollars) per day until the date on which Design-Builder achieves Substantial Completion.

3.2.1.2 Owner may deduct liquidated damages described in subparagraph 3.2.1.1 from any unpaid amounts then or thereafter due the Design-Builder under this Agreement. Any liquidated damages not so deducted from unpaid amounts due the Design-Builder shall be payable to the Owner upon written demand, together with interest from the date of the demand at the rate of one percent (1%) per month.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than

*(Paragraphs deleted)*

October 1, 2009, subject only to Modifications.

*(Table deleted)*

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:

*(Check the appropriate box.)*

- [X] Stipulated Sum in accordance with Section 4.2 below;
- [ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- [ ] Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

*(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)*

Init.

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be Five Million Three Hundred Thirty Eight Thousand Three Hundred Fifty Seven Dollars ( \$5,338,357.00 ), subject to additions and deductions as provided in the Design-Build Documents.

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.2.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
-------------	-------	-----------------

§ 4.2.4 Allowances, if any, are as follows:

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)*

Allowance	Amount (\$ 0.00)	Included Items
Environmental Indemnification Payment	\$32,000	N/A

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

*(Paragraphs deleted)*

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon properly completed Applications for Payment submitted to the Owner by the Design-Builder under the terms herein, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents. Compliance with this Article 5, the terms of this Agreement and with Exhibit A are an express condition precedent to the Owner's obligation to pay Design-Builder.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Each payment request shall be accompanied by the Design-Builder's Waiver of Lien to Date for the full amount of the payment, and by the Waivers of Subcontractors and Suppliers who are included in the payment request, through the date of that payment request. The above waivers requirements shall not affect the duty of the Design-Builder to promptly pay each Subcontractor the amount to which he is entitled. Request for final payment shall be accompanied by conditional Final Waivers of Lien from the Design-Builder, all Subcontractors and Suppliers of material who have not previously furnished such final waivers. Conditional Final waivers will be for the full amount of the contract and originals shall be provided in exchange for final payment.

All applications for payment shall be accompanied by a schedule of values, draw request form or affidavits from the Design-Builder and Subcontractors containing such information and in such form as approved by Owner or as may be reasonably required by Owner, Owner's title company or lenders. With respect to each payment being made to

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User Notes:

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(4115604081)

Design-Builder, any subcontractor or materialman, the application shall be accompanied by a Waiver of Lien to Date or Conditional Final Waivers duly executed by the persons who receive the payment and as shown on such affidavits, which Waiver of Lien shall be a form approved by Owner.

§ 5.1.3 Provided that an Application for Payment is received not later than the 5th day of month, the Owner shall make payment to the Design-Builder not later than the 25th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty ( 20 ) days after the Owner receives the Application for Payment.

§ 5.1.4 Payments may be made through a title escrow, including through a Chicago Title & Trust standard form Construction Loan Escrow Agreement. Design-Builder agrees to execute and deliver such documents, indemnities and agreements as the title escrowee may reasonably request in order to provide interim mechanics' lien endorsements or insurance for each payment made by Owner hereunder. The cost of the escrow shall be paid by Owner.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### § 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10% ) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10% );
- .3 Subtract the aggregate of previous payments made by the Owner; and

init.

- 4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- 1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- 2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:  
*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)*

Retention shall be withheld at 10% on the first 50% of the Stipulated Sum less design costs, fees, permits, and Design-builder fees. No retention will be withheld from the last 50% of the Stipulated Sum.

*(Paragraphs deleted)*

#### § 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design Builder no later than 30 days after the Design Builder has fully performed the Design Build Contract, including the requirements in Section A.9.10 of Exhibit A, terms and Conditions, except for the Design Builder's responsibility to correct non conforming Work discovered after final payment or to satisfy other requirement, if any, which extend beyond final payment.

### ARTICLE 6 DISPUTE RESOLUTION

#### § 6.1

*(Paragraphs deleted)*

Intentionally blank.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)*  
*(Check one.)*

Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

Litigation in a court of competent jurisdiction

Other *(Specify)*

*(Paragraphs deleted)*

### ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed

*(Paragraphs deleted)*

on the first page of this Agreement.

*(Table deleted)*

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

*(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)*

Init.

Name and Address	License Number	Responsibilities to Owner	Other Information
See page 1			

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:  
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

Name and Address	License Number	Responsibilities to Owner	Other Information
Colliers Bennett & Kahnweiler		Owner's Rep	
Terracon		Owner's testing agency	
		Owner's Security Contractor	
		Owner's Fuel Contractor	
		Owner's Information Technology Contractor	

§ 7.4 The Owner's Designated Representative is:  
(Insert name, address and other information.)

Ron Katt

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project. In addition to Owner's Designated Representative, Owner may retain a third party as its Consultant/Owner's Representative ("OR") for the purposes of reviewing the Design-Build Documents, plans, specifications and the Work in progress and advising Owner accordingly. Design-Builder agrees to cooperate with OR and Owner's other consultants who may be retained in conjunction with the Project. Throughout this Agreement (including but not limited to all Exhibits), whenever information or documents are required to be provided to Owner, they are also required to be provided simultaneously to OR unless Owner directs otherwise. Whenever information, actions or documents are required to be provided by Owner, they may instead be provided by either Owner or OR. Any meetings with Owner shall also include OR. Owner presently plans to engage Colliers Bennett & Kahnweiler as OR.

§ 7.5 The Design-Builder's Designated Representative is:  
(Insert name, address and other information.)

James Wagman  
Panattoni Construction, Inc.  
6250 N. River Road, Suite 4050  
Rosemont, Illinois 60018

init.

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.5 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Unless disputed in good faith, payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Paragraphs deleted)*

#### ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Title of the Supplementary and Other Conditions exhibit: AAI Phase I Environmental Assessment Report by Carlson Environmental, dated July 27, 2007, and addenda thereto dated October 9, 2007 and September 26, 2008; Environmental Site Assessment Phase I by Huff & Huff, dated October, 2008; and Environmental Site Assessment Phase II by Huff & Huff, dated October, 2008.

*(Table deleted)*

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

*(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)*

Project Criteria exhibits are attached hereto and include: (1) the Conceptual Site Plan date October 10, 2008; (2) the Conceptual Building Elevations date October 10, 2008; (3) the Conceptual Office Plan date October 10, 2008; and (4) the Outline Specifications dated August 7, 2008 and revised October 22, 2008

*(Table deleted)*

§ 8.1.4 The Design-Builder's Proposal, dated \_\_\_\_\_, consists of the following:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Title of the Design-Builder's Proposal:

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Title of the Amendments to Design-Builder's Proposal exhibit:

§ 8.1.6 The Addenda, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Title of the Addenda exhibit:

*(Table deleted)*

§ 8.1.7 Exhibit A, Terms and Conditions.

*(Paragraph deleted)*

Init.

§ 8.1.8 Intentionally deleted.

§ 8.1.9 Exhibit C, Insurance and Bonds.

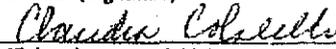
§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Other Documents exhibit:

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

Northern Illinois Gas Company  
d/b/a Nicor Gas Company

OWNER (Signature)



(Printed name and title)

CLAUDIA COLALILLO  
SENIOR VICE PRESIDENT

Panattoni Construction, Inc.,  
A California corporation

DESIGN-BUILDER (Signature)

(Printed name and title)

Int.

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User Note:

(4115604681)

| § 8.1.8 Intentionally deleted.

| § 8.1.9 Exhibit C, Insurance and Bonds.

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

| Title of the Other Documents exhibit:

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

Northern Illinois Gas Company  
d/b/a Nicor Gas Company

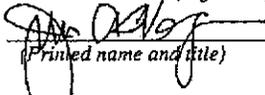
OWNER (Signature)

(Printed name and title)

Panattoni Construction, Inc.,  
A California corporation

DESIGN-BUILDER (Signature)

(Printed name and title)

  
JAMES A WEGMAN SVP/RM

Int.

 **AIA** Document A141™ – 2004 Exhibit A

*Terms and Conditions*

for the following PROJECT:  
(Name and location or address)

Design and construction of Regional Reporting Center on approximately 4.54 acres of vacant property located at 1665 Birchwood Avenue, Des Plaines, Illinois.

THE OWNER:  
(Name and location)

Northern Illinois Gas Company d/b/a Nicor Gas Company  
1844 Ferry Road  
Naperville, Illinois

THE DESIGN-BUILDER:  
(Name and location)

Panattoni Construction  
8775 Folsom Blvd, Suite 100  
Sacramento, California 95826

and

Panattoni Construction, Inc.  
6250 N. River Road, Suite 4050  
Rosemont, Illinois 60018

**ADDITIONS AND DELETIONS:**

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

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Int.

TABLE OF ARTICLES

- A.1 GENERAL PROVISIONS
- A.2 OWNER
- A.3 DESIGN-BUILDER
- A.4 DISPUTE RESOLUTION
- A.5 AWARD OF CONTRACTS
- A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- A.7 CHANGES IN THE WORK
- A.8 TIME
- A.9 PAYMENTS AND COMPLETION
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- A.13 MISCELLANEOUS PROVISIONS
- A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

Init.

**ARTICLE A.1 GENERAL PROVISIONS**

**§ A.1.1 BASIC DEFINITIONS**

**§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section 1.1 of the Agreement. As used throughout this Agreement, "design documents" and "construction documents" shall mean the plans, drawings and specifications to be prepared by the Design-Builder or Design-Builder's Architect or Engineer pursuant to this Agreement. The design documents are those plans, drawings and specifications prepared prior to approval of final plans issued for permit and construction of the Work. The construction documents are those plans, drawings and specifications approved for construction of the Work. Upon their preparation and approval by Owner, the construction documents shall constitute a part of the Design-Build Documents.

**§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

**§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect, Engineer (where appropriate to the design services) or their respective authorized representatives.

**§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

**§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

**§ A.1.1.6 THE WORK**

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations and to provide Owner with the full benefit and use of the Project in accordance with the Project Criteria, including but not limited to all work reasonably inferable from the Project Criteria or the other Design-Build Documents. The Work may constitute the whole or a part of the Project.

**§ A.1.1.7 THE PROJECT**

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

**§ A.1.1.8 Intentionally deleted.**

**§ A.1.1.9 KNOWLEDGE**

The terms "knowledge," "recognize" and "discover," and their respective derivatives and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall mean that which the Design-Builder knows or in the exercise of reasonable care should know, recognizes or in the exercise of reasonable care should recognize, and discovers or in the exercise of reasonable care should discover. Similarly, the expression "reasonably inferable" and similar terms in the Design-Build Documents shall mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Design-Builder by the Design-Build

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Documents."

**§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS**

§ A.1.2.1 As used herein, the words "laws," "codes" or "standards" shall include all laws, statutes, codes, ordinances, rules, regulations, lawful orders, and other legal requirements enacted at the time of the execution of this Agreement, in addition to applicable guidance documents from regulatory agencies, judicial decrees and interpretations, standards, permits, and licenses, including, but not limited to, those concerning health, safety, and the protection of the environment, as amended from time to time, of all federal, state, county, and local governmental agencies and authorities that are applicable to the Work and any of Design-Builder's obligations under the Design-Build Documents.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but (i) not that such information complies with applicable laws, regulations, codes, standards or other legal or quasi-legal requirements applicable to the Project, and, (ii) because the Design-Builder is also an affiliate of the seller of the real estate underlying the Project, not such information concerning the conditions of the real estate, site or jurisdiction in which the Project is to be constructed, all of which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall advise Owner accordingly in writing, prior to proceeding with any of the Work, and shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner in writing prior to proceeding with any of the Work. In the event of inconsistencies within or among parts of the Design-Build Documents, or between the Design-Build Documents and applicable standards, codes, regulations or ordinances, the Design-Builder either shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; or both, in accordance with Owner's interpretation.

**§ A.1.3-CAPITALIZATION**

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

**§ A.1.4 INTERPRETATION**

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS**

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder is the seller (or an affiliate of the seller) of the real estate on which the Project is to be constructed and that it has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

**§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. Effective upon execution of this Agreement, without further action, the Design-Builder, Design-Builder's Architect and other providers of professional services under this Agreement shall assign upon payment of all fees and costs for the Instruments of Service, all common law, statutory and other reserved rights, including use of those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project, however, and any use by Owner not in accordance with this paragraph shall be at Owner's sole risk. If the Owner uses the Instruments of Service without the involvement of Design Builder on another project and does not

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assume the duties and obligations of the Design Builders to the design professional then the Owner shall indemnify and hold harmless the design professional from all claims and any expense including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service.

*(Paragraphs deleted)*

§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

#### ARTICLE A.2 OWNER

##### § A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner or the requirements set forth in this Agreement.

*(Paragraphs deleted)*

##### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 As an affiliate of the seller of the real estate underlying the Project, Design-Builder is already in possession of and familiar with all necessary surveys and other information describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information 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 restriction, 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.

§ A.2.2.3 As an affiliate of the seller of the real estate underlying the Project, Design-Builder is already in possession of and familiar with all necessary results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, and subsurface conditions at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work. Design-Builder agrees to cooperate and to cause the Architect to cooperate with such review.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections.

§ A.2.2.6 As an affiliate of the seller of the real estate underlying the Project, Design-Builder is already in possession of and familiar with all necessary services, information, surveys and reports required or necessary for the completion of the Work.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder, but the failure to observe, discover or give notice shall not relieve Design-Builder of any obligations under this Agreement or from the obligation to complete the Work in accordance with the Design-Build Documents.

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§ A.2.2.8 Intentionally Blank.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 As the seller (or an affiliate of the seller) of the real estate underlying the Project, Design-Builder is already in possession of and familiar with all necessary reports or services of geotechnical engineers or other consultants for subsoil, air and water conditions of the site sufficient to complete the Work in accordance with the Design-Build Documents. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations but at Design-Builder's expense and discretion.

§ A.2.2.11 As the seller (or an affiliate of the seller) of the real estate underlying the Project, Design-Builder has already or shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Work, the Project Criteria or Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve in writing or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. 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, or ultimate compliance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2  
(Paragraphs deleted)  
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§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals, specifically noting, emphasizing or "clouding" such changes or deviations. The Owner shall review and approve in writing each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval within 5 business days of the submittal.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owners review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the specific deviation prior to approval by the Owner or, b) the Owner has approved a Change Order, reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site in Owner's sole discretion to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ A.2.3.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

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§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents, but shall not have a duty to do so. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site, full time project representative to observe the Work and to have such other responsibilities as the Owner may assign.

§ A.2.3.9 The Owner shall, following written notice from Design-Builder of the stage of the Work reflecting such condition, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents after notice of such failure by Owner and reasonable opportunity to cure the failure, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, nor shall it imply any right to stop work as a result of any particular means, methods, techniques or safety precautions in connection with the Work since these are solely the responsibilities of the Design-Builder.

#### § A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ A.2.5.2 The rights stated in this Article A.2 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner granted in the Design-Build Documents, by statute, at law or in equity.

### ARTICLE A.3 DESIGN-BUILDER

#### § A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

#### § A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions and insured for their acts, errors and omissions in accordance with the requirements of this Agreement. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder, to which Owner is an express, intended third party beneficiary, and such services shall be in strict accordance with (i) the terms of this Agreement; (ii) at least the same degree of care and

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skill as exercised by other design professionals and consultants performing similar work on similar projects in Illinois; and (iii) all applicable laws, codes, standards and regulations applicable to the Work.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing, shall incorporate this Agreement by reference and shall expressly provide that Owner is an intended third party beneficiary. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner prior to commencement of the Work.

§ A.3.2.3 In addition to Owner's rights as a third party beneficiary under such contracts, the Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 As the seller (or affiliate of the seller) of the real estate underlying the Project, Design-Builder is fully familiar with and responsible for the requirements of the Design-Build Documents, materials and other information referenced in Section A.2.2, has taken field measurements of all existing conditions related to the Work, and has observed all conditions at the site affecting the Work.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's review and written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be specifically referenced and disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be specifically referenced and disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades;
- .3 include documents customarily required for regulatory agency approvals;
- .4 provide, when constructed, a Project in compliance with all applicable laws, codes, standards and regulations applicable to the Work, including but not limited to the Americans With Disabilities Act and similar regulations related to accessibility;
- .5 provide, when constructed, a complete, functioning Project suitable for the Owner's purposes as set forth in the approved Design Documents; and
- .6 have been performed with at least the same degree of care and skill as exercised by other design professionals and consultants performing similar work on similar projects in Illinois.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with at least the same degree of care and skill as exercised by other design professionals and consultants performing similar work on similar projects in Illinois, and (iii) comply with applicable laws,

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ordinances, codes, rules and regulations applicable to the Work, including but not limited to the Americans With Disabilities Act and similar regulations related to accessibility; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 10 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

### § A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and written approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal. Owner's response to all documents submitted for review and approval shall be within 5 business days of submittal unless otherwise set forth in this Agreement.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall regularly keep the Owner and Owner's designated representative informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate and be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ A.3.3.8 The Design-Builder shall be responsible for the proper sequencing of all Work and inspection of portions of Work already performed to assure that such portions are in proper condition to receive subsequent Work.