



**BENSENVILLE**  
VILLAGE CLERK'S OFFICE

12 South Center Street  
Bensenville, IL 60106

Office: 630.350.3404  
Fax: 630.350.3438  
[www.bensenville.il.us](http://www.bensenville.il.us)

**VILLAGE BOARD**

June 14, 2023

**President**  
Frank DeSimone

**Board of Trustees**  
Rosa Carmona  
Ann Franz  
Marie T. Frey  
McLane Lomax  
Nicholas Panicola Jr.  
Armando Perez

**Village Clerk**  
Nancy Quann

**Village Manager**  
Evan K. Summers

**Mr. Peter Pawelek**  
252 George Street, Unit D  
Bensenville, Illinois 60106

**Re: June 7, 2023 FOIA Request**

**Dear Mr. Pawelek:**

I am pleased to help you with your June 7, 2023 Freedom of Information Act ("FOIA"). The Village of Bensenville received your request on June 7, 2023. You requested copies of the items indicated below:

*"Business and Owners name of the contractor who was responsible for construction of senior center. Notice received 5/31/23 of this shutdown. Any payments/deposits already made to this contractor by the village since approval of project. Cost of entire project. Cost of completed work vs remaining work to be completed for this project."*

After a search of Village files, the following information was found responsive to your request:

- 1) Village of Bensenville Resolution No. R-9-2023 entitled *"Authorizing the Execution of a Contract with Empire Construction Company for the Senior Center Construction Project in the Not-to-Exceed Amount of \$812,500"*. (86 pgs.)
- 2) Old Republic Surety Company Letter. (2 pgs.)
- 3) Village of Bensenville Purchase Order to Empire Construction in the Amount of \$130,747.50. (1 pg.)
- 4) Village of Bensenville Purchase Order to Empire Construction in the Amount of \$105,687.00. (1 pg.)
- 5) Village of Bensenville Purchase Order to Empire Construction in the Amount of \$40,000.00. (1 pg.)

These are all the records found responsive to your request.

Very truly yours,

  
Corey Williamsen  
Freedom of Information Officer  
Village of Bensenville

**RESOLUTION NO. R-9-2023**

**AUTHORIZING THE EXECUTION OF A CONTRACT  
WITH EMPIRE CONSTRUCTION COMPANY FOR  
THE SENIOR CENTER CONSTRUCTION PROJECT IN THE NOT-TO-  
EXCEED AMOUNT OF \$812,500**

WHEREAS the Village of Bensenville provides various services to the senior population of the Village; and

WHEREAS the Village desires to expand on those services by providing a Senior Center where future events can be held; and

WHEREAS the Senior Center will be located in the lower level of Village Hall, and

WHEREAS the Village has submitted for and received funding of \$1,180,000.00 through the Illinois Department of Commerce and Economic Opportunity (DCEO); and

WHEREAS the DCEO funding is a reimbursable program; and

WHEREAS bids were received on December 21, 2022, for the Renovation Construction Project required for the construction of the Senior Center, and

WHEREAS Empire Construction Company submitted the lowest responsible bid in the amount of \$812,500.

NOW THEREFORE BE IT RESOLVED by the Village President and Board of Trustees of the Village of Bensenville, Counties of DuPage and Cook, Illinois as follows:

**SECTION ONE:** The recitals set forth above are incorporated herein and made a part hereof.

**SECTION TWO:** The Village President and Board of Trustees authorizes and approves the attached Resolution authorizing the execution of a contract for the Senior Center Construction with Empire Construction Company in the not-to-exceed amount of \$812,500.

**SECTION THREE:** The Village Manager is hereby authorized and directed to execute on behalf of the Village of Bensenville, and the Deputy Clerk is hereby authorized to attest thereto, the necessary paperwork.

**SECTION FOUR:** This Resolution shall take effect immediately upon its passage and approval as provided by law.

**SECTION FIVE:** This Resolution is passed and approved by the President and Board of Trustees of the Village of Bensenville, Illinois, dated January 17, 2023.

APPROVED.

Frank DeSimone, Village President

ATTEST:



Nancy Quinn, Village Clerk

AYES: Franz, Frey, Lomax, Panicola, Perez

NAYS: None

ABSENT: Carmona



January 6, 2023

**VIA EMAIL**

(1) Page Inclusive  
Caracci@bensenville.il.us

Joe Caracci, Director of Public Works  
Village of Bensenville, Department of Public Works  
717 E. Jefferson Street  
Bensenville, Illinois, 60106

Re: Village of Bensenville  
Senior Center Buildout – Village Hall  
Architect's Project Number: 22-044  
**Letter of Recommendation**

Dear Mr. Caracci:

Bids were received on the above referenced project at Bensenville Village Hall at 9:00 am on December 21, 2022. Sixteen bidders were Bidders of Record, and ten bids were received.

TRIA Architecture, Inc. has reviewed the qualifications and references of the low bid contractor, Empire Construction Company, and has found no evidence which would disqualify them from being awarded the contract for this work.

TRIA Architecture, therefore, recommends that the BOARD consider awarding the contract for construction to **Empire Construction Company**, 214 West Ohio Street, 4<sup>th</sup> Floor, Chicago, Illinois 60654, for the total contract amount of \$812,500.00. Work to be substantially complete by June 20, 2023.

Also, please find the attached Bid Tabulation Form for your review.

If you have any questions concerning the bidding of the Bensenville Senior Center Buildout, please do not hesitate to call. Tria Architecture, and myself specifically, look forward to working with the Village of Bensenville toward a successful completion of this project.

Sincerely,

  
WES McALLISTER  
TRIA ARCHITECTURE, INC.  
Wes McAllister, AIA  
Staff Architect

Attachments: Bid Tabulation, Dated December 21, 2022, 1 Page

File Name: 22044LOR.docx

## TRIA ARCHITECTURE

**Illinois Office | Corporate Headquarters:** 901 McClintock Drive, Suite 100, Burr Ridge, Illinois 60527  
**Indiana Office:** 436 Sand Creek Drive N, Suite 105, Chesterton, Indiana 46304  
Company Main: 630.455.4500 Fax: 630.455.4040  
[www.TriaArchitecture.com](http://www.TriaArchitecture.com)

# BID TABULATION

Owner: Village of Bensenville  
Project Name: Senior Center Buildout - Village Hall  
Architect's Project #: 22-044  
Bid Due Date: December 21, 2022, 9:00 a.m.



### Notes:

Substantial Completion Date - June 20, 2023

Bid Docs - 00480, 00481, 00485, 00486, 00487, 00495, 00496, 00497



## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum**

**AGREEMENT** made as of the 17th day of January in the year 2023  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address and other information)

Village of Bensenville  
12 South Center Street  
Bensenville, Illinois 60106  
Telephone Number: (630) 350-3435

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

and the Contractor:

(Name, legal status, address and other information)

Empire Construction Company  
214 West Ohio Street, 4<sup>th</sup> Floor  
Chicago, Illinois 60654

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

for the following Project:

(Name, location and detailed description)

22-044 – Village of Bensenville - Senior Center Buildout-Village Hall

Village of Bensenville – Senior Center  
12 South Center Street  
Bensenville, Illinois 60106

The Architect:

(Name, legal status, address and other information)

Tria Architecture, Inc  
901 McClintock Drive, Suite 100  
Burr Ridge, Illinois 60457  
Telephone Number: (630) 455-4500  
Fax Number: (630) 455-4040

The Owner and Contractor agree as follows.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be:  
(Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

**§ 3.2** The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

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User Notes:

(1632519525)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[  ] By the following date: June 20, 2023, 5:00 p.m.

**§ 3.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Eight Hundred Twelve Thousand Five Hundred Dollars (\$ 812,500.00), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

Item	Price
<u>None</u>	

**§ 4.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

**§ 4.3** Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item	Price
<u>1 – Cash Allowance</u>	<u>\$50,000.00</u>
<u>2 – Concrete Floor Slab Moisture</u>	<u>\$40,000.00</u>
<u>Mitigation Allowance</u>	

**§ 4.4** Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>None</u>		

**§ 4.5** Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

See Article 9.11 of the General Conditions – A201-2017 as modified.

**§ 4.6** Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1<sup>st</sup>) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the first (1<sup>st</sup>) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 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; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Ten (10%) percent retainage from each Application for Payment.

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

none

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

**§ 5.1.9** Except with the Owner's prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

%

**§ 5.3 Interest**

~~Payments due and unpaid under the 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.~~  
*(Insert rate of interest agreed upon, if any.)*

—%

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation not resolved by pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:  
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Mr. Frank DeSimone  
Village of Bensenville  
12 South Center Street  
Bensenville, Illinois 60106  
Telephone Number: (630) 594-1088  
Fax Number: (630) 350-3449

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Mr. Zach Cunningham  
Empire Construction Company  
214 West Ohio Street, 4<sup>th</sup> Floor

Chicago, Illinois 60654  
Telephone Number: (312) 374-3388  
Fax Number: (630) 934-1922

**§ 8.4** Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 8.5 Insurance and Bonds**

**§ 8.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 8.5.2** The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 8.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 8.7** Other provisions:

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.) Exhibit.

.5 Drawings: Drawings Table of Contents - Exhibit B

Number	Title	Date

.6 Specifications: Specification Table of Contents - Exhibit C

Section	Title	Date	Pages

.7 Addenda, if any:

Number	Date	Pages
1	December 13, 2022	15 Pages
2	December 16, 2022	3 Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract

Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

**.8 Other Exhibits:**

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

The Sustainability Plan:

Title	Date	Pages
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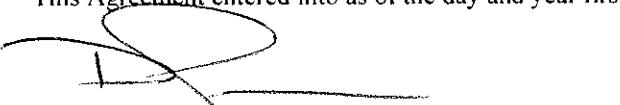
Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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**.9 Other documents, if any, listed below:**

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

  
**OWNER (Signature)**

Mr. Frank DeSimone

Village President

*(Printed name and title)*

  
**CONTRACTOR (Signature)**

Mr. Zach Cunningham

Executive of Operations

*(Printed name and title)*



# AIA® Document A101® – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 17<sup>th</sup> day of January in the year 2023  
(In words, indicate day, month and year.)

for the following **PROJECT**:

(Name and location or address)

22-044 – Village of Bensenville - Senior Center Buildout–Village Hall

Village of Bensenville – Senior Center  
12 South Center Street  
Bensenville, Illinois 60106

**THE OWNER:**

(Name, legal status and address)

Village of Bensenville  
12 South Center Street  
Bensenville, Illinois 60106

**THE CONTRACTOR:**

(Name, legal status and address)

Empire Construction Company  
214 West Ohio Street, 4<sup>th</sup> Floor  
Chicago, Illinois 60654

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

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. Exhibit from companies lawfully authorized to do business in the jurisdiction in which the Project is located. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The

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copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### § A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

#### § A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. ~~This insurance shall include the interests of mortgagees as loss payees. The policy shall be based on a \$5,000 deductible, applicable to all losses for each occurrence. The Contractor shall be solely responsible for any and all losses up to \$5,000 per loss. Losses are payable to the Owner for Owner's own account.~~

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, ~~or windstorm~~, ~~and debris removal including demolition occasioned by enforcement of any legal requirements, or windstorm and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of an insured loss.~~ The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
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##### § A.2.3.1.2.1 Coverage shall not extend to:

- A. The Contractors', Subcontractors', or the Architect's/Engineer's Tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work.
- B. Property owned by employees of any of the foregoing.
- C. Vehicles of any kind.
- D. Trees and shrubs.
- E. Drawings and specifications.

§ A.2.3.1.2.2 The policy by its terms or endorsement shall specifically permit and allow for beneficial or partial occupancy prior to completion or acceptance of the project by the Owner.

**§ A2.3.1.2.3** The prompt repair or reconstruction of the Work as a result of any insured loss or damage shall be the Contractor's responsibility and shall be accomplished at no additional cost to the Owner or Architect. The contractor shall furnish the proper assistance in the adjustment and settlement of any loss. Loss will be adjustable with and payable to the party purchasing the Builder's Risk Insurance who shall be responsible for apportioning the loss proceeds to each and every entity involved in the loss to the extent of his interest. The policy shall contain a provision that the policy will not be canceled, changed or altered until at least 30 calendar days prior written notice has been given to the named insured.

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions. The policy shall be based on a \$5,000 deductible, applicable to all losses for each occurrence. The Contractor shall be solely responsible for any and all losses up to \$5,000 per loss. Losses are payable to the Owner for Owner's own account.

**§ A.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing. Policy by its terms or endorsement shall specifically permit and allow for beneficial or partial occupancy prior to completion or acceptance of the Project by the Owner.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

**§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

**§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

**§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged

property.

- [ ] **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- [ ] **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- [ ] **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- [ ] **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

#### **§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- [ ] **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

- [ ] **§ A.2.5.2 Other Insurance**

*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits

### **ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

#### **§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or

replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Contractor shall also cause the automobile liability policy to include the Owner, the Architect and the Architect's consultants as additional insureds.

### **§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

Coverages shall be maintained without interruption from date of commencement of the Work until 60 days after the date of Final Completion or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. With respect to the Contractor's completed operations coverage, until expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

### **§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, and One Million Dollars (\$ 1,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

.6 Liability insurance should be written on the comprehensive general liability basis, and shall include, but not be limited to the following sub-lines:

- A. Premises and Operations including X, C, U coverages (explosion, collapse, underground).
- B. Products and Completed Operations to be maintained for two (2) years after Final Completion.
- C. Independent Contractor's Protective.
- D. Broad Form Comprehensive General Liability Endorsement:
  1. Contractual Liability, including contractors' obligation under Section 3.18.
  2. Personal Injury & Advertising Injury Liability
  3. Premises Medical Payments

- 4. Fire Legal Liability - Real Property
- 5. Broad Form Property Damage Liability (including Completed Operations)
- 6. Incidental Medical Malpractice Liability
- 7. Additional Persons Insured, including employees for personal and advertising injury.
- 8. Extended Bodily Injury Liability
- .10 If liability insurance is written under the new simplified form - Commercial General Liability, the above listed coverages should be included.
- .11 If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or retroactive date shall predate the contract; the termination date of the policy shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with Section 9.10.2, and an extended period endorsement "Supplemental Tail," must be purchased.
- .12 In any and all claims against the Owner or the Architect, or any of their officers, directors, board members, officials, agents or employees, by any employee or Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the insurance obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or subcontractor under the Worker's Compensation Act, disability benefit acts or other employees benefits acts.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers. Umbrella Excess Liability insurance in the amount of Two Million Dollars (\$2,000,000) over commercial general liability insurance, automobile liability insurance and Employer's Liability insurance.

**§ A.3.2.5** Workers' Compensation at statutory limits.

**§ A.3.2.6** Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$ 1,000,000 ) each employee, and One Million Dollars (\$ 1,000,000 ) policy limit.

**§ A.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ A.3.2.8** If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and One Million Dollars (\$ 1,000,000 ) in the aggregate.

**§ A.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and One Million Dollars (\$ 1,000,000 ) in the aggregate.

**§ A.3.2.10** Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

**§ A.3.2.11** Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

**§ A.3.2.12** Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

**§ A.3.3 Contractor's Other Insurance Coverage**

**§ A.3.3.1** Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

The Contractor shall purchase and maintain insurance covering the Owner's contingent liability for claims which may arise from operations under the Agreement and that will protect the Owner and the Architect and their respective officers, directors, board members, its agents and employees from and against all claims, damages, losses and expenses including attorney's fees and all other defense costs whether in legal or administrative actions arising (a) out of or resulting from the performance of the work provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or to destruction of tangible property (other than the work itself) including the loss of use resulting therefrom and (b) out of any claim made by any employee of the contractor or any subcontractor or by the Illinois Department of Labor for the amount of any wages or salaries which should have been paid to such employees and interest thereon, fines or other assessments relating to such violation, pursuant to provisions of the Prevailing Wage Act, 820 ILCS 130/0.01 et seq., regardless of whether or not it is caused in part by a party to whom insurance is afforded pursuant to this department.

**§ A.3.3.2** The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

**§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to

the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- § A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- § A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.**
- § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- § A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
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### § A.3.3.3 Other Insurance Requirements

**§ A3.3.3.1** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required of the Contractor by this Exhibit A shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by this Exhibit A. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. On the Certificate of Insurance, delete in the cancellation provision the following words, 'endeavor to' and 'but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.'

**§ A3.3.3.2** The insurance company issuing the comprehensive general liability insurance coverage required for the performance of this contract shall be licensed to do business in Illinois with Best's Insurance Guide (current edition) rating of "A" or better and satisfactory to the Owner.

**§ A3.3.3.3** The Contractor shall name the Owner and the Architect and each of their respective officers, directors, officials, board members, agents and employees as additional insureds on the Contractor's general liability policy for claims arising from the Contractor's operations, the automobile liability policy and the excess/umbrella liability policy. The foregoing policies shall be endorsed to be primary over any other insurance which the additional insureds may have and shall contain a severability of interests clause. The Contractor shall require each of its subcontractors to comply with the requirements of this Section A3.3.3.3.

**§ A3.3.4** Under no circumstances shall the Contractor be relieved of providing insurance as required by this Contract. If inspection of Certificates by Owner would reasonably reveal any deficiencies in coverage as required by this Contract, Contractor shall not be relieved of its obligation to prove insurance coverages as required herein and may not assert any defense of waiver, acquiescence, estoppels, or otherwise by the failure of Owner or its agents to object to the form of the Certificate. Policies or other documents provided by the Contractor to certify that the Contractor complied with the provisions of this Contract regarding insurance coverage.

**§ A3.3.5** Liability of Contractor and Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liability, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either Contractor's or any Subcontractor's insurance.

#### **§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, located with a A.M. Best rating of "A" and with a surety company to which the Owner has no objection. The Contractor's performance bond and labor and materials payment bond shall be in the amount of one hundred percent (100%) of the Contract Sum, as follows:

(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	<u>See above.</u>
Performance Bond	<u>See above.</u>

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**§ A3.4.1** The Contractor shall deliver the required bonds to the Owner not later than ten days following the date of notification of the Award of Contract or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

**§ A3.4.2** The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney. Such bonds shall be in the form of American Institute of Architect's Document A-311 or a similar form worded exactly the same as Doc. A-311 and shall bear the same date as, or a date subsequent to, the date of the Contract. The bonds shall be issued by a bonding company licensed to operate in the State of Illinois and approved by the Owner.

**§ A3.4.3** The failure of the Contractor to supply the required bonds within 10 days after the prescribed Agreement forms are presented for signature, or if the bonding company finds that the Contractor is NOT bondable, shall constitute a default, and the Owner may award the Contract to the next responsible low bidder.

**§ 3.4.5** If at any time the Owner becomes dissatisfied with any Surety or Sureties then upon the Bonds, or for any other reason such Bonds shall cease to be adequate security for the Owner, the Contractor shall, within five (5) days after notice to do so, substitute acceptable Bonds in such forms and sum and signed by such other Sureties as may be satisfactory to the Owner. No further payments shall be deemed due nor shall be made until the new Sureties shall have qualified.

**§ A3.4.6** Whenever the Contractor shall be and is declared by the Owner to be in default under the Contract, the Surety and Contractor are each responsible to make full payment to the Owner for any and all additional services of the

Architect as which are required as a result of the Contractor's default and in protecting the Owner's right under the Agreement with the Contractor.

§ A3.4.7 The Contractor must within ten (10) days after the execution of this Agreement furnish a Performance Bond agreeing to pay not less than the prevailing wage for work to be performed in accordance with the Contract and the laws of the State of Illinois, and agreeing to pay all sums of money due for labor, materials, apparatus, fixtures or machinery and transportation with respect thereto, as in said Payment Bond provided, each dated the same day as the Agreement, in the forms prescribed by the Owner and each in an amount equal to the Contract Sum with a corporate Surety or Sureties acceptable to the Owner authorized to do business in the State of Illinois. These Bonds shall be maintained by the Contractor and shall remain in full force and effect until final acceptance of the work by the Owner or sixty (60) days following the date of Final Payment, whichever occurs later. The Contractor shall agree and shall cause the Surety to agree to be bound by each and every provision of the Contract Documents.

§ A3.4.8 In the event the Surety will make any assignment for the benefit of creditors or commit any act of bankruptcy, or if it shall be declared bankrupt or if it shall file a voluntary petition in bankruptcy or shall in the opinion of the Owner be insolvent, the Contractor shall agree forthwith upon request of the Owner to furnish and maintain other corporate Surety with respect to such bonds satisfactory to the Owner.

#### **ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

§ A4.1 The Contractor is responsible for determining that subcontractors are adequately insured against claims arising out of or relating to the Work. The premium cost and charges for such insurance shall be paid by each Subcontractor.

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## ***General Conditions of the Contract for Construction***

### **for the following PROJECT:**

*(Name and location or address)*

22-044 – Village of Bensenville - Senior Center Buildout–Village Hall

Village of Bensenville – Senior Center

12 South Center Street

Bensenville, Illinois 60106

### **THE OWNER:**

*(Name, legal status and address)*

Village of Bensenville

12 South Center Street

Bensenville, Illinois 60106

### **THE ARCHITECT:**

*(Name, legal status and address)*

Tria Architecture, Inc.

901 McClintock Drive, Suite 100

Burr Ridge, Illinois 60527

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,	3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
9.9.2, 9.10.1, 10.3.2, 12.2.1, <b>13.4</b>	15.1.2
<b>TIME</b>	<b>Weather Delays</b>
<b>8</b>	8.3, 15.1.6.2
<b>Time, Delays and Extensions of</b>	<b>Work, Definition of</b>
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, <b>8.3</b> , 9.5.1, 9.7,	1.1.3
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5	Written Consent
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	13.2, 13.3.2, 15.4.4.2
	Written Interpretations
	4.2.11, 4.2.12
	Written Orders
	1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, consist of the Invitation to Bid, Instruction to Bidders, Bid Form, Agreement between Owner and Contractor (hereinafter the Agreement). Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Schedules, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) an Architect's Supplemental Instruction, or (5) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. Figured dimensions shall be followed in preference to measurements by scale. All dimensions shall be checked against field measurements of existing conditions to be taken by the Contractor.

#### § 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### § 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### § 1.1.9 In the event that the Owner retains a Construction Manager at Risk for the Project, the term "Contractor" as used herein shall refer to the Contractor or Construction Manager at Risk.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Contractor and items reasonably inferable therefrom. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. ~~performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results all.~~

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.1.2 Where conflicts exist within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall seek a clarification in writing from the Architect. In the event that the Architect does not respond within fourteen (14) days, the more stringent or higher quality or greater quantity requirements shall apply.

§ 1.2.1.3 Large-scale drawings take precedence over small-scale drawings, figured dimensions over scaled dimensions and noted materials over graphic representations. Words in singular shall include a plural whenever applicable, or the context so indicates.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.3.1 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) The Agreement, 2) Addenda, with those of later date having precedence over those of earlier date, 3) The General Conditions of the Contract for Construction, 4) Drawings and Specifications.

## § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

## § 1.4 Interpretation

In the interest of brevity the Contract 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. The descriptive headings of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions following them.

## § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

## § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

## § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

## § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

# ARTICLE 2 OWNER

## § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Village of Bensenville (lessee) has entered into a lease agreement dated XXXXXXXX with the Diocese of Joliet (lessor) to utilize a facility located at 400 West Wood Ave, Bensenville, IL 60106 for use as its future Senior Center. The terms of the lease provide the Village of Bensenville a permission to renovate the aforementioned facility and enter into contracts to perform such renovations. For the purpose of this project, the term "Owner" means the Village of Bensenville and the Diocese of Joliet.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

## § 2.2 Evidence of the Owner's Financial Arrangements Information and Services Required of Owner

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately. All permits and fees shall be obtained and paid for by the Contractor under the Contract Documents. The Contractor shall also be responsible to obtain all temporary permits including, but not limited to, demolition and canopy permits required to execute the Work.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that

event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided in the Contract Documents. The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

**§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. **Surveys.** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number, furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect. Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

## § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor 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 Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~~~seven-day~~ (7) period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner ~~may, may immediately,~~ without prejudice to other remedies the Owner may have, correct such default or neglect. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable~~ ~~In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including Owner's expenses and but not limited to, attorney's fees, compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments and expenses incurred in connection with such default, neglect or failure. Said Change Order shall be deemed signed by the Contract for the purposes stated in Section 7.2.1 even if the Contractor fails to physically sign such Change Order. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~ at the Owner's option, the excess shall be deducted from any payment thereafter due or shall be paid by the Contractor immediately upon demand of the Owner. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 hereof.

## § 2.6 ADDITIONAL RIGHTS

The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, ~~become generally familiar with has inspected~~ the local conditions under which the Work is to be performed, ~~and has reviewed the Contract Documents, and correlated personal observations and inspections, and the bid, with all of the~~ requirements of the Contract Documents.

§ 3.2.1.1 It shall be the duty of the Contractor to verify all dimensions given on the Drawings, and to report any error or inconsistency to the Architect before commencing Work.

§ 3.2.1.2 If the Contractor finds any details, construction procedures or materials shown on the Drawings or called for in the Specifications which the Contractor believes may not be satisfactory for the use shown, the Contractor shall so notify the Architect at least five (5) days before bids are due. Signing of the Agreement and starting the Work by the

Contractor shall indicate the Contractor agreement with all details, construction procedures, and materials so shown and/or specified and shall indicate the Contractor's willingness to construct the Project in strict accordance with the Contract Documents and to guarantee the Project in full compliance with the warranty provisions of the Contract Documents. By executing this Agreement, the Contractor further acknowledges that it has satisfied itself as to the nature and location of the Work, the general and local conditions under which the Work is to be performed, including those bearing upon transportation, disposal, handling and storage of materials availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the Work, and all other matters which can in any way affect the Work or the cost thereof. Any failure by the Contractor to become acquainted with all the available information concerning these conditions will not relieve the Contractor from any obligations with respect to the Contract Documents.

**§ 3.2.1.3** If Work is required in a manner that makes it impossible to produce the quality required by the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing an interpretation from the Architect before proceeding with the Work. The Contractor shall perform the work at no additional cost to the Owner in accordance with the Architect's determination.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering. The Contractor shall promptly report to the Owner and the Architect any errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized or should have recognized such error, inconsistency, or omission, and failed to report it to the Architect, in which case the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and the Contractor shall bear all attributable costs for correction. The Contractor agrees to release and hold harmless the Owner for errors, inconsistencies or omissions in the Contract Document which should have been discovered by the Contractor.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. shall verify the accuracy of all grades, elevations, existing conditions, dimensions and locations. In all cases of interconnection of the Contractor's Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, existing conditions, locations or dimensions shall be promptly rectified by him without extra cost to the Owner. Neither the Owner nor the Architect guarantee the exactness of grades, elevations, dimensions, existing conditions or locations given on any drawings issued by the Architect or work installed by other contractors.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the obligations in Sections 3.2.2 and 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, or for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or should have recognized the error, inconsistency, omission, or difference and failed to report it.

**§ 3.2.5** In no event shall the Architect or Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with this Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

**§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall review any construction or installation procedure (including those recommended by any product manufacturer). The Contractor shall provide written notice to the Architect:

- (a) If a specified product deviates from good construction practices.
- (b) If following the Specifications will affect any warranties.
- (c) Any objections which the Contractor may have to the Specifications.

The responsibilities imposed on the Contractor by this Section shall be in addition to, and not be limited by, any and all other provisions of these Contract Documents.

**§ 3.3.2** The Contractor shall engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full time supervision of the approved superintendent described in Section 3.9.3. The Contractor shall be liable for all property damage including repairs or replacement of the Work and economic losses which proximately result from the breach of this duty. The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Subcontractors or claiming by, through or under the Contractor, and for any damages, losses, costs and expenses resulting from such acts or omissions.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required of or performed by persons other than the Contractor.

**§ 3.3.5** The Contractor shall coordinate all portions of the work with separate Owner-employed contractors, if any.

**§ 3.3.6** The Contractor shall assign a competent, technically-trained office project manager to the Project who shall perform all office functions including checking, approving and coordinating shop drawings and approving purchasing and disbursement pay-out requests and correspondence, and responding to Owner inquiries.

**§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.**

**Substitutions: Before or after the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of those specified in the Contract Documents will be considered only under one or more of the following conditions:**

- (a) Required for compliance with interpretation of code requirements or insurance regulations then existing.
- (b) Unavailability of specified products, through no fault of the Contractor.
- (c) Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- (d) Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- (e) When it is clearly seen, in the judgment of the Architect and with the Owner's approval, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.

By making requests for substitutions hereunder, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.2.1** Substitution requests shall be written, timely and accompanied by adequate technical, cost data and information to satisfy one or more conditions above. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cut sheets, performance and test data and any other data or information necessary for a complete evaluation by the Architect.

**§ 3.4.2.2** The Contractor may make a substitution only upon the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for any damages to property or injuries to persons, or to any other harm, caused by the Contractor's employees.

**§ 3.4.4** After the Agreement has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in Section 7.5.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage new, unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The warranty will not be affected by the specification of any product or procedure unless the Contractor objects promptly to such product or procedure and advises the Architect of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the

limitations of any manufacturer's warranty. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the Owner's sole discretion. Inability or refusal of the Subcontractor or supplier responsible for the defective work to correct such work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. Unless a specific guarantee is required in a particular division of the Specifications that is longer in duration than one (1) year from the date of Final Completion, the Work shall be guaranteed by the Contractor against defects in material and workmanship for a period of one (1) year from the date of Final Completion (date of issuance of final payment to the Contractor).

§ 3.5.3 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay Retail sales tax shall not be included in the bid amount. The Owner is exempted by Section 3-5 of the Illinois Use Tax Act, 35 ILCS 105/1 et. seq. from paying any of the taxes imposed by the Act and sales to Owner are exempt by 35 ILCS 120/1 et. seq. from any of the taxes imposed by the Act. The Department of Revenue of the State of Illinois has declared that sales of materials to construction contractors for conversion into real estate for schools, governmental bodies, agencies and instrumentalities are not taxable retail sales. The Contractor shall be responsible for any sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Work.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies. The Contractor shall secure all permits, licenses and inspections necessary for proper execution and completion of the Work that which are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded, which are legally required when bids are received.

§ 3.7.1.1 All cash deposits, bonds, fees, inspections, licenses, or permit fees shall be paid for by the Contractor.

§ 3.7.1.2 Prior to submission of all applications for permits, licenses or inspections the Contractor shall submit a copy of the application or written notice to the Owner for approval.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor observes or believes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the Architect and Owner in writing for clarification by the Architect. If the Contractor performs Work knowing it to be contrary to any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs, damages, losses and expenses attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. disturbed. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum

or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. The site conditions contemplated by this Section include, but are not limited to, materials containing asbestos, polychlorinated biphenyl (PCB), or hazardous materials as defined in the Contract Documents.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent fluent in the English language and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications by the superintendent shall be confirmed in writing. Other communications by the superintendent shall be similarly confirmed on written request in each case. Failure of the superintendent to supervise the job properly shall be deemed as a default by the Contractor under the Contract Documents as determined by the Owner with the advice of the Architect.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. If the Owner has any objection to the proposed superintendent, the Owner shall notify the Contractor in writing within seven (7) days of its objection, and the Contractor shall propose a replacement.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed and Architect's written consent.

**§ 3.9.4** The Contractor's superintendent must be dedicated solely to the Project and must be at the Project site at all times that Work is being performed at the site, whether the Work is performed by the Contractor's own forces or by any subcontractors. The superintendent must be at the Project site from the first day of on-site activities until a minimum of thirty (30) days after the date of Substantial Completion until all punch list items have been completed.

Failure by the Contractor to provide full-time on-site supervision shall constitute grounds for termination of the Contract Documents by the Owner with seven days written notice.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall Project, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, review its Construction Schedule for the Work of the Contractor. Such Construction Schedule shall not exceed the completion dates, delivery dates or time limits required in the Contract Documents. The Construction Schedule shall be revised by the Contractor at appropriate intervals as required by the conditions of the Work and Project, and shall provide for expeditious execution of the Work and shall be submitted to the Owner and Architect for review and approval. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Contractor shall prepare and keep current, for the Architect's record only, a schedule of submittals (the "Submittal Schedule") which is coordinated with the approved Construction Schedule and allows the Architect reasonable time, as indicated in the Contract Documents, to review submittals. Neither the Contractor's preparation of the Submittal Schedule nor the Architect's receipt or review shall modify the Contractor's responsibility to make required submittals or to do so in a timely manner to provide for review in accordance with Section 4.2.7 as modified herein.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Owner's or Architect's failure to object to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Architect's or Owner's failure to object to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.4 At the time of each Application for Payment, the Contractor shall provide to the Owner and the Architect an update on the Project schedule and a written status report, which includes a description of the progress of the Work and if progress is behind schedule, the Contractor's plan to recover the Work to meet the approved Construction Schedule. The report shall also include a summary of the Contractor's meetings with subcontractors.

§ 3.10.5 The Contractor shall hold meetings at least weekly (or at such intervals as are otherwise acceptable to the Owner and Architect) at the site. The Contractor shall provide the subcontractors, Architect and the Owner with a meeting schedule. The Contractor shall require subcontractors currently working at the site(s) to have a representative present for such meetings.

§ 3.10.6 Within twenty-one (21) days of the award of the Project, the Contractor shall provide a written report to the Architect and the Owner that includes a list of the Contractor's suppliers, a list of materials and equipment to be purchased from suppliers and fabricators, the time required for fabrication, and the scheduled delivery dates for materials and equipment. Copies of the Contractor's purchase orders shall be delivered to the Architect and the Owner as soon as possible after receipt by the Contractor.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field

changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and along with all operating manuals for all equipment, shall be available to the Architect at all times and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed, after completion of the Work but before the final Application for Payment.

**§ 3.11.1** The Contractor shall maintain at the site(s) one set of record drawings for the Owner and Architect of the as built plans and specifications for concealed work, particularly concealed piping and conduit. Any deviations from conditions shown on the Contract Drawings shall be shown and dimensioned on these record drawings. The Contractor shall develop layout drawings for concealed work that is schematically indicated on Contract Drawings in order to have dimensioned layouts of such concealed work. This requirement does not authorize any deviations without approval of the Architect.

**§ 3.11.1.1** The field information in the record drawings to be so marked shall include at a minimum:

- (1) Significant deviations of any nature made during construction;
- (2) Location of underground mechanical and electrical services, utilities, and appurtenances, referenced to permanent surface improvements;
- (3) Location of mechanical and electrical services, utilities, and appurtenances that are concealed in the building, referenced to accessible features of the building.

**§ 3.11.2** The Contractor shall maintain and shall require its subcontractors to maintain at the site(s) an accurate record of deviations and changes in the Work from the Contract Documents; shall indicate all such deviations and changes on reproducible transparencies of the Contract Documents; and shall turn over to the Architect upon completion of the Work all such record drawings, documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and Electrical Contractors/Subcontractors shall be required to record all changes or deviations in the work from the Contract Documents. The cost of recording and transferring the changes or deviations to the transparencies shall be included in the Contract Sum for the respective Work. The as-built transparencies shall be delivered by the Contractor to the Architect prior to the final acceptance of the Project and issuance of final payment.

### **§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect 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 Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** ~~If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately 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 professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.~~

**§ 3.12.10.1.** ~~When professional certification or performance criteria of materials, systems or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information of the relevant performance requirements and on the conditions under which the materials, systems, or equipment will be expected to operate at the Project site. The certification shall be based on performance under the operating conditions at the Project site. The Architect shall be entitled to rely on the accuracy and completeness of such certifications.~~

**§ 3.12.10.2** ~~If~~ When the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.1** Only material and equipment which is to be used directly in the construction of this Project shall be brought to and stored on the job site by the Contractor. After equipment is no longer needed on this Project, it shall be promptly removed from the job site. Protection of all construction materials and equipment stored at the Job Site is the sole responsibility of the Contractor.

**§ 3.13.2** The Contractor and its Subcontractors, and their respective employees, agents, and consultants, shall not enter any part or portion of the building work sites when students are present without the Owner's written authorization.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent Contractor which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work. Contractor's consent is not required.

**§ 3.14.3** Only tradespersons skilled and experienced in cutting and patching shall perform such work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall remove and clean up hazardous materials as required by the Contract Documents and in compliance with all applicable laws, rules regulations and codes.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

**§ 3.15.3** All exterior and interior Work shall be cleaned by the Contractor using specific materials as recommended for surfaces to be cleaned. Damage to any surfaces due to improper cleaning methods of materials shall be repaired to the satisfaction of the Architect and Owner, by the Contractor, at no cost to the Owner.

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress at all times and wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect, except to the extent of Contractor's fault. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, waives any right of contribution against and shall defend, indemnify and hold harmless Owner, any Owner's Representative, the Architect and each of their respective officers, directors, officials, board members, agents, consultants and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from or in connection with the performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a any such claim, damage, loss or expense (these are collectively referred to as "claims") is caused by or alleged to be caused by an act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense any of them or anyone for whose acts any of them may be liable in the performance of the Agreement, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this Section 3.18. Contract. The obligations of the Contractor under this Section 3.18.1 shall be construed to include, but not be limited to, injury or damage consequent upon failure to use or misuse by the Contractor, his agents, Sub-Contractors, and employees of any scaffold, hoist, crane, stay, ladder, support, or other mechanical contrivance erected or constructed by any person, or any or all other kinds of equipment, whether or not owned or furnished by the Owner.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend, save and hold harmless the following indemnitees: the Architect and the Owner and each of their respective board members, directors, officers, officials, agents, consultants, and employees, individually and collectively, from all claims, demands, actions and the like, of every nature and description, made or instituted, by third parties, arising or alleged to arise out of the work under this Agreement, as a result of any act or omission of either the Contractor or any Subcontractor, or any of their employees or agents. The Contractor and its Subcontractor shall name the Owner, the Architect and their respective board members, officers, officials, directors, agents and employees, individually and collectively, as additional insureds on their commercial general liability for claims arising out of the operations of the Contractor/Subcontractor, automobile liability and excess/umbrella coverage which insurance shall be primary coverage as respects the additional insureds. The Contractor and Subcontractor/s shall furnish Owner with copies of such policies prior to beginning any Work.

§ 3.18.3 "Claims, damages, losses and expenses" as these words are used herein shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs and other similar indirect or incident damages incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 In the event that the Contractor or its Subcontractors are requested but refuse to honor the indemnity obligations hereunder or to provide a defense, then the party indemnifying shall, in addition to all other obligations, pay the cost of bringing any such action, including attorneys' fees, time expended by the party being indemnified and their employees in the defense of any litigation covered by this indemnity provision at their usual rates, including costs and expenses, to the party requesting indemnity.

§ 3.18.5 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Contractor hereby knowingly and intentionally waives the

right to assert, under the case of *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991) that Contractor's liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agrees that Contractor's liability to indemnify and defend the Owner and Architect is not limited by the so called "Kotecki Cap". The Contractor shall include this provision in each of its Subcontract agreements and shall require its Subcontractors to be so bound.

**§ 3.18.6** The Contractor shall include in each and every Subcontract with any and all subcontractors and/or material suppliers performing Work and require each and every Subcontractor and/or material supplier performing Work to agree to be bound by all of the provisions 3.18.1 through 3.18.9 under the Contract Documents.

**§ 3.18.7** The Contractor's indemnity obligations hereunder shall specifically include all claims and judgments which may be made against the indemnitees under federal or state law or the law of the other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or Contractor's employees method of execution of the Work.

**§ 3.18.8** The indemnification provisions of this Section 3.18 are not intended to circumvent the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq. and shall not be construed as such, but in such a way to effect its enforcement.

**§ 3.18.9** The Contractor shall indemnify and hold harmless the Owner in the event of labor or trade union conflicts or disputes between the Contractor and Subcontractors and their respective employees. The Contractor shall endeavor to adjust and resolve such conflicts and disputes which affect the timely completion of the Work. Such conflicts or disputes shall not be a basis or excuse for the violation of the Contract Documents by the Contractor or its Subcontractors, and shall not provide the Contractor with relief from complying with dates for Substantial Completion or Final Completion. Labor or trade union disputes that affect production or delivery of materials or equipment, or the installation, shall be at no cost to the Owner. The Contractor shall notify the Architect and the Owner in writing as soon as possible as to any labor or trade disputes which may affect the Work and its timely completion. In such event, the Contractor shall provide a written proposal to the Architect and the Owner which includes any comparable substitution(s) necessary to complete the Work.

**§ 3.18.10** None of the foregoing provisions shall deprive the Owner or the Architect of any action, right or remedy otherwise available to them or either of them at law.

**§ 3.19** If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the Work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

## ARTICLE 4 ARCHITECT

### § 4.1 General

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** The Architect's and its consultants' services will terminate sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in the Contract Documents, whichever is earlier. Any services required of the Architect and its consultants after this date will be back-charged to the Contractor by the Owner.

## § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals ~~appropriate to the stage of construction, or as otherwise agreed with the Owner, as agreed to by Owner and Architect~~ to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully ~~Work to endeavor to determine that the Work, when completed, will be in accordance with the Contract Documents. Documents, and to endeavor to guard the Owner against defects and deficiencies in the Work.~~ However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility 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 Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the ~~portion of the~~ Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. However, this Section shall not be deemed to prohibit direct communication between the Owner and the Architect.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Contractor shall provide to the Architect (1) mechanics lien waivers for itself and each of its Subcontractors for any monies sought for payment and (2) sworn statements listing subcontractors and materialmen before issuing Payment Certificates, and if such sworn statement or waivers are not provided, the Architect's Certificates shall be conditioned upon and subject to the receipt of such waivers.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Any Work rejected by the Architect shall be reported promptly to the Owner in writing. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. 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, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall make submittals to the Architect in a manner to allow for the Architect's reasonable prompt review and to allow for timely ordering of components of the Work to affect no delay in the Work.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10; however, the issuance of such final Certificate of Payment shall not bind the Owner to any payment unless it accepts such final Certificate for Payment. The Owner's acceptance shall not be unreasonably withheld. Additionally, the Architect shall review all warranties and related documents and provide a recommendation to the Owner as to whether the warranties comply with the Contract Documents.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will initially interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If the Contractor submits such written request to the Architect, the Contractor will simultaneously provide a copy of such request to the Owner. The Architect will consult with the Owner regarding any request by the Contractor before responding to the Contractor.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

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

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect will provide the Owner with a copy of any response provided pursuant to this Section.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** ~~Unless otherwise stated in the Contract Documents, the Contractor, as~~ As soon as practicable after award of the Contract, ~~the Contractor~~, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.1.1** ~~In addition to the information which may be required prior to the award of the Project, not later than twenty-one (21) days after Notice of Award of the Project, the Contractor shall furnish to the Owner through the Architect the names of persons or entities proposed as manufacturers for each of the products identified in the General Requirements and, where applicable, the name of the installing Subcontractor.~~

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made ~~reasonable and timely an~~ objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. ~~All subcontracts between the Contractor and subcontractors shall be made in writing, shall be assignable to the Owner, and shall contain the following sentence, 'The Owner is an intended third-party beneficiary of this Subcontract.'~~

**§ 5.2.3** ~~If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required objection. No additional costs shall be allowed for a change required due to an objection by the Owner, Contractor, or Architect~~

**§ 5.2.4** ~~The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution without written approval of the Owner. The Contractor further acknowledges and agrees that after award of the Project to the Contractor, any savings on changes to subcontract or substitute subcontractors will be for the benefit of the Owner and will not be used for the benefit of the Contractor or to increase the Contractor's profit on the Project. The foregoing benefit to the Owner shall include any adjustment in the amount of the price of a subcontract to less than the quoted price of the subcontractor upon which the Contractor's fixed bid price or Contract Sum was based. Further, if a manufacturer or supplier of any machinery or equipment, including, but not limited to, heating and air conditioning units or systems, changes specifications or offers incentives, discounts or lower prices after award of the Contract to the Contractor, those savings will inure to the benefit of the Owner and not the Contractor, subcontractor, manufacturer or supplier.~~

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.1** The Contractor shall be responsible for its Subcontractors and shall carry insurance which covers the Contractor for liability arising from its Subcontractors and shall ensure that its Subcontractors are carrying insurance to protect the Subcontractors as well as the Owner, Architect and Architect's consultants.

**§ 5.3.2** The Owner and Architect assume no responsibility for overlapping, gaps or omission of parts of the Work by various Contractor in awarding subcontracts.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Intentionally Deleted.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

#### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

subrogation without altering the Owner's Agreement with the Contractor.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

#### **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

~~§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.~~

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

**§ 7.1.4** For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedule showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may at its option refuse the extension of time and have the Contractor perform the Work within the original schedule provided all reasonable costs for completing the Work including overtime and acceleration costs are included in the Change Order.

**§ 7.1.5** If a proposal for extra work is requested by the Owner from the Contractor which involves additional time, at the Owner's option, the Owner may extend the completion date for that portion of the Work included in the change, without extending the Contract Time for the remainder of the Work.

**§ 7.1.6** Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, and bond and insurance costs.

**§ 7.1.7** For any adjustments to the Contract Sum based on other than the unit price method, overhead, profit, and General Conditions combined shall be calculated at the following percentages of the cost attributable to the change in the Work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent of the Cost of the Work for the change.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors five percent of the amount due the Subcontractor.

- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent of the Cost of Work for the change.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent of the amount due the Sub-subcontractor.
- .5 Costs to which overhead, profit, and general conditions is to be applied shall be determined in accordance with the Contract Documents.
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any;

**§ 7.1.8** In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by:

- .1 A complete itemization of costs including labor, material.
- .2 Subcontractor's, Sub-subcontractor's and material suppliers for their portions of the work itemized to include labor, material.
- .3 Labor costs shall be indicated hourly wage and fringe benefits. Labor hours shall be provided for each phase of the work.
- .4 Material costs shall include unit costs and units required where applicable.

**§ 7.1.9** The Contractor understands that Change Orders to the Contract which increase or decrease the Cost of the Work by \$10,000 or more, or the time of completion by 30 days or more, will require written documentation by the Owner that the changes:

- .1 were not reasonably foreseeable at the time the Contract was signed;
- .2 were not within the contemplation of the Contract as signed; and
- .3 are in the best interest of the Owner and authorized by law.

**§ 7.1.10** The Contractor shall provide written notice to the Architect and the Owner if overtime labor rates are included in the computation of the cost of a proposed Change Order or Construction Change Directive.

**§ 7.1.11** In the event that the Contractor and the Owner do not reach agreement on a Change Order or a Construction Change Directive, the Owner may, in its discretion, delete the labor, materials and equipment that are the subject of the Change Order or the Construction Change Directive from the Work to be performed under the Contract Documents. The Owner shall receive credit from the Contractor for the labor, materials, and equipment, including Contractor overhead and profit attributable to the deleted work. The Owner may complete the deleted work through another contractor or subcontractor.

**§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 ~~Costs~~ Actual costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 ~~Costs~~ Actual costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 ~~Rental~~ Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 ~~Costs~~ Actual costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 ~~Costs~~ Actual costs of supervision and field office personnel directly attributable to the change. Cost of supervision, unless directly attributable to change, will not be allowable as an itemized cost for any additions (or credited for deletions) unless a change in the Contract Time is made.

Overtime when specifically authorized by the Owner shall be paid for by the Owner on the basis of a premium payment only, plus the cost of insurance and taxes based on the premium payment. Overhead and profit will not be paid by the Owner for overtime. Field tickets must be signed by the Owner or Architect for verification of overtime hours.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order. Upon resolution of exact scope, Contract Sum change, and Contract Time change, a Change Order shall be prepared incorporating the Construction Change Directive.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be computed in accordance with Section 7.3.4 shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, increase or decrease, if any, with respect to that change. Also, if the amount of either the credit or the addition is in dispute, the amount of the other, non-disputed item may not be included in Applications for Payment. Overhead and profit will be included in credits to the same extent they are included in additive Change Orders.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

**§ 7.3.11** Change Orders that result in a net decrease in or credit to the Contract Sum must include a credit to the Owner for the Contractor's overhead and profit as described in Section 7.1.7.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall promptly notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined, working day, excluding weekends and legal holidays.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall bear all additional costs incurred to meet the Contract Time, which may require working overtime without additional compensation.

**§ 8.2.4** The Contractor shall reimburse the Owner for all fees or expenses, including without limitation, the Architect, engineers and legal expenses, for additional services necessitated by Contractor's failure to obtain Substantial Completion within the time established in the agreement, for more than two (2) inspections for Substantial Completion, or for more than one (1) final inspection.

#### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights that it or its Subcontractors or any other person may otherwise have to recovery, any costs, expenses and damages of any nature that it or its Subcontractors or

any other person may suffer by reason of delay in the performance of the Work or any portion thereof, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

**§ 8.3.3** This Section 8.3 The Contractor shall not be entitled to any increase in the Contract Sum as a result of any delays in the progress of the Work. The Contractor's sole remedy for delay shall be an extension of time. This Section 8.3 does not preclude recovery of damages for delay by either party the Owner under other provisions of the Contract Documents.

**§ 8.3.4** Notwithstanding other provisions in this Contract, Contractor shall not be entitled to any recovery of damages arising out of any event or delay caused within Contractor's control and/or for "Acts of God", including, without limitation, adverse weather conditions (which shall include typical rain events that can be reasonably predicted through historical data) which prevents such early or timely completion of the Work.

**§ 8.3.5** Where a delay occurs that is beyond the Contractor's control and when the delay is not reasonably unacceptable, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

**§ 8.3.6** The stated dates for Substantial Completion and Final Completion of the Work are material inducements to the Owner in entering into the Contract Documents and all time limits stated in the Contract Documents are of the essence of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. At the pre-construction meeting, the Contractor shall submit to the Owner and the Architect a detailed schedule of values allocating the Contract Sum to various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

**§ 9.3.1** At least ten days twenty (20) days before the Owner's submission date for its Board's review and approval of such payment at the next Owner's Board meeting or, if the Owner's Board approves otherwise, before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. However, this Section will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the Subcontract.

**§ 9.3.1.3** No interest will be paid upon retention.

**§ 9.3.1.4** The Contractor shall submit all payment requests to the Architect for all work completed during the previous time period. Requests submitted late will not be processed until the following month. The Contractor shall include the Contractor's waiver of lien for the full amount of the Application for Payment and Subcontractors' partial waivers of lien in the amounts of the previous month's payment

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. The Owner shall have no responsibility or liability to the Contractor for the safekeeping of materials and equipment stored at the site or off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

**§ 9.3.4** The Contractor shall submit its application for payment as outlined in Section 9.3 on the first of the month, and the Owner will make payment in accordance with the Local Government Prompt Payment Act upon Applications properly certified by the Architect. Each partial payment request shall be made monthly and Contractor shall request payment of ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work less the aggregate of previous payments in each case. Upon reaching Substantial Completion and with prior authorization of the Owner and the Architect, the retainage may be reduced to five (5%) for each item that is deemed substantially complete on the subsequent pay application.

**§ 9.3.5** Before each certificate for payment is issued, the Contractor shall furnish to the Architect a complete statement of the amounts due to Subcontractors, parties supplying material, and for his own materials and labor, on AIA Document G702 and G702A "Application and Certificate for Payment."

**§ 9.3.6** A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. The Contractor shall submit waivers on a current basis with each Application for Payment, and the Subcontractors and suppliers shall submit partial waivers of lien for the amount paid to them from the prior month's pay application.

**§ 9.3.7** Upon giving ten (10) days' notice in writing to the Contractor, the full contract retainage may be reinstated, and the retention restored to the basis established in Section 9.3.4 if the manner of completion of the Work and its progress do not remain satisfactory to the Owner, or if any surety of Contractor withholds its consent.

**§ 9.3.8** All material necessary for the construction of this Project, delivered upon the premises, shall not be removed from the premises without written consent of the Architect.

**§ 9.3.8** The Contractor's request for final payment shall include: (1) the Contractor's Final Lien Waiver in the full amount of the contract; and (2) final lien waivers in the full amount of their contracts from all subcontractors and suppliers for which final lien waivers have not previously been submitted.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by

joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

**§ 9.5.5 The Owner shall not be required to make payment unless in its own independent judgment it accepts the Architect's Certificate.**

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In the event that the Owner elects to utilize an escrow agent, the Owner and the escrow agent may elect to make payments due the Contractor to the Contractor and its subcontractors.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect ~~and Owner~~ on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** ~~The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.~~ Intentionally Deleted.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

**§ 9.7 Failure of Payment**

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and~~

~~the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided for in the Contract Documents.~~ Intentionally Deleted.

### **§ 9.8 Substantial Completion**

~~§ 9.8.1~~ Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. ~~The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted (other than for the failure of Contractor), designated instruction of the Owner's personnel in the operation of systems has been completed and documents, and all final finishes within the Project are in place. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's normal business operations and/or use and enjoyment of the Project. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty calendar days or within the time stated elsewhere in the Contract Documents following the Date of Substantial Completion. Upon the Owner's written consent, the Date of Substantial Completion of landscaping portions of the Work or other designated portions of the Work may be as mutually acceptable to the Owner and the Contractor. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-Subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents.~~

~~§ 9.8.2~~ When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. ~~With respect to Work enumerated on the list accompanying the Certificate of Substantial Completion, the guarantee or warranty period shall start at the time of subsequent acceptance of this Work in writing by Owner.~~

~~§ 9.8.3~~ Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

~~§ 9.8.4~~ When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

~~§ 9.8.5~~ The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.9 Partial Occupancy or Use**

~~§ 9.9.1~~ The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under

Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** ~~All Work identified on Contractor's Punch List and thereafter identified in Architect's inspection shall be completed within thirty (30) days of issuance of the Certificate of Substantial Completion. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** ~~If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~

**§ 9.10.4** ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~

- ~~1. liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
- ~~2. failure of the Work to comply with the requirements of the Contract Documents;~~
- ~~3. terms of special warranties required by the Contract Documents; or~~
- ~~4. audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

~~§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~

### **§ 9.11 LIQUIDATED DAMAGES**

~~§ 9.11.1 The Contractor is solely responsible for substantially completing the Work by the scheduled Substantial Completion Date for each Phase of the Work. This responsibility includes all work of the Contractor and that of its Subcontractors and suppliers. The Contractor acknowledges that the Owner will suffer significant financial loss, and there will be disruption to the Owner if the Project is not complete on or before the Substantial Completion Date for the Work set forth in the Contract Documents. The Contractor further acknowledges that the measure of such loss and the disruption to the Owner would not be susceptible to precise calculation. To protect the Owner against said loss and disruption to the Owner and not as a penalty, the Owner and the Contractor hereby agree that the Contractor and the Contractor's Surety, if any, shall be liable for and shall pay to the Owner, Liquidated Damages as per the Liquidated Damages Sliding Scale below for each calendar day of delay, per each School Campus, per Phase in Substantial Completion. Substantial Completion for the Project refers to all scheduled work being a minimum 99% complete.~~

#### **LIQUIDATED DAMAGES SLIDING SCALE**

Original Awarded Bid Cost	Liquidated Damages per Calendar Day
\$0 - \$499,999.99	\$500
\$500,000.00 - \$999,999.99	\$600
\$1,000,000.00 - \$3,999,999.99	\$700
\$4,000,000.00 - \$7,999,999.99	\$800
\$8,000,000.00 - \$11,999,999.99	\$900
\$12,000,000.00 - \$19,999,999.99	\$1,000
\$20,000,000.00 - Above	\$1,500

~~§ 9.11.2 Payments of Liquidated Damages are in addition to other direct damages that may be incurred by the Owner and not a penalty. All such Liquidated Damages may be set-off against any monies that may be due the Contractor. The Owner's approval or making of progress payments or final payment, with or without knowledge that the Work was untimely, shall not constitute or be deemed a waiver of the Owner's rights or claims, or of the Owner's ability to receive Liquidated Damages under the Contract or common law.~~

~~§ 9.11.3 In the event that Article 9.11.1 is found to be unenforceable, the Owner shall be entitled to recover its actual damages, including consequential, incident or indirect damages, for a failure to complete the Work by the scheduled Substantial Completion Date for each Phase of the Work.~~

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. ~~Neither the Owner nor the Architect shall be responsible for any safety precautions or programs in connection with the Work.~~

#### **§ 10.2 Safety of Persons and Property**

~~§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to~~

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

~~§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.~~

~~§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings~~

against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall, at its sole cost and expense, promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

**§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 24~~twenty-one~~ (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.1.1** The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the Project site(s) except to the extent such Hazardous Materials: (1) are necessary for the prosecution of the Work; and (2) have been approved in writing by the Owner. Any Hazardous Materials allowed to be used on the Project site(s) shall be used, stored, and disposed of in writing as directed in writing by the Owner. Any Hazardous Materials allowed to be used in the Project site(s) shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus hazardous Materials, as well as, any other Hazardous Materials that have been placed, released, or discharged on the Project site(s) by the Contractor or any of its employees, agents, suppliers, or subcontractors, shall be removed from the Project site(s) at the earlier of (1) completion of the Work requiring the use of such Hazardous Materials; (2) the completion of the Work as a whole; or (3) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site(s). The Contractor shall provide the Owner with copies of all warning labels on products that the Contractor or any of its subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right to Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site(s) in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or

received by the Contractor, or of which the Contractor otherwise becomes aware, that relate to any Hazardous Materials on the Project site(s). Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by the Owner), and hold the Owner and Architect harmless from any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing and remedying the effect of any Hazardous Materials on, under, from, or about the Project site(s), arising out of or relating to, directly or indirectly, the Contractor's or its subcontractor's failures to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of transportation Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and all substances, materials, or wastes that are or become regulated under federal, state, or local law.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. Intentionally Deleted.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants and each of their officers, agents and employees shall be named as additional insureds under the Contractor's ~~commercial general liability policy or as otherwise described liability policies on a primary and non-contributory basis as required~~ in the Contract Documents.

§ 11.1.2 ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~

§ 11.1.2. ~~The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.~~

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.4 ~~Liability of Contractor and Subcontractor is not limited by purchase of insurance. Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or either of their respective insurance carriers. Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, Architect, or any Subcontractor's interest or liability, but are merely minimums. The obligation of the Contractor and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either Contractor's or any Subcontractor's insurance.~~

§ 11.1.5 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 ~~Failure to Purchase Required Property Insurance.~~ If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon

receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation – Intentionally Deleted.**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the Owner's property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors. Contractor shall pay the Subcontractors.

and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work. The Owner as fiduciary shall have the power to adjust and settle a loss with insurers.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### § 12.2.2 After Substantial-Final Completion

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall, at Contractor's sole cost and expense, correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. Intentionally Deleted.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. In the case of any Work performed in correcting defects pursuant to guarantees or warranties provided or referred to by this Article 12, the warranty or guarantee period shall begin anew from the date of the completion or correction of such Work.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents and pay all attorney's fees and expenses related thereto immediately upon demand.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ State of Illinois.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

**§ 13.4.3** The Owner and the Architect reserve the right to accept or reject any substitutions bid upon. If substitutions are not specifically accepted in writing, materials specified as "standard" shall be used in construction of this project.

**§ 13.4.4** Any material specified by reference to the number, symbol or title of specific standards, such as commercial standards, federal specifications, trade association standards, or similar standards, shall comply with requirements in the latest revision thereof and any amendment of supplement thereto in effect on the date of the Instruments of Service, except as limited to type, class or grade, or modified in such reference by a given date. The standards related to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

#### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's Contractor's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Notwithstanding any other term or provision in this Article 13 to the contrary, in the event that any testing or inspection of the Work or any part thereof reveals defects in materials or workmanship, then the Contractor shall remedy such defects and shall bear all costs and expenses associated with such testing which is related to determining whether such defects have been properly remedied.

**§ 13.4.4** Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.4.5** If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.4.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

#### **§ 13.5 Interest**

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Any references in this Agreement to interest being assessed against the Owner are hereby deleted.

**§ 13.6** The Contractor shall provide credit for the Owner and Architect in the Contractor's promotional materials for the Project.

#### **§ 13.7 REGULATIONS**

**§ 13.7.1** The Contractor and/or Subcontractor warrant/s that it is familiar with and it shall comply with Federal, State and local laws, statutes, ordinances, rules and regulations, Owner's Board Rules and Policies, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the contract including without limitation Workmen's Compensation Laws, minimum salary and wage statutes and regulations, laws with respect to permits and licenses and fees in connection therewith, laws regarding maximum working hours, and, without limitation, such other laws and regulations as are specifically described below. Additionally, the Contractor and subcontractor warrant that they shall comply with any amendments to such federal, state and local laws, statutes, ordinances, rules and regulations that are enacted thereafter during the performance of the Work and under this Agreement. To the extent that there are any violations of any of the applicable laws, rules, regulations and/or court orders/decrees mentioned herein, the Contractor and Subcontractor shall be responsible for indemnifying and holding both the Owner and Architect free and harmless from all costs, fees and expenses incurred, directly or indirectly and including without limitation attorneys' fees, by the Owner or the Architect in responding to and

complying with demands made by any of the governmental departments/agencies and/or the courts, or an aggrieved employee or person and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to any compliance with the applicable laws, rules and regulations referenced herein. No plea of misunderstanding or ignorance thereof will be considered.

**§ 13.7.1.1** Whenever required or upon the request of the Architect or Owner, the Contractor or Subcontractor shall furnish the Architect and the Owner with satisfactory proof of compliance with said federal, state and local laws, statutes, ordinances, rules, regulations, orders, and decrees.

**§ 13.7.2** The Contractor shall comply with the non-discrimination federal, state and local laws, including without limitation:

**§ 13.7.2.1** Equal Employment Opportunities Act, American with Disabilities Act and Human Rights Act. The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigation and complaint process available through the Department and the Commission; and (vii) protection against retaliation as provided by Section 6-101 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105(A)(4) of the Human Rights Act, 775 ILCS 5/2-105(A)(4). The Contractor agrees to fully comply with the requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., including but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder. The provisions of Section 14.2 are included in this Amendment pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Contractor shall be required to comply with these provisions only if and to the extent they are applicable under the law.

**§ 13.7.2.2** As required by Illinois law, in the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be canceled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, the Contractor agrees as follows:

**§ 13.7.2.2.1** That it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin or ancestry, age, citizenship, physical or mental handicap or disability, military status, unfavorable discharge from military service or arrest record status; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.

**§ 13.7.2.2.2** That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

**§ 13.7.2.2.3** That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respect comply with the Illinois Human Rights Act and the Department's Rules.

**§ 13.7.2.2.4** That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

§ 13.7.2.2.5 That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible for Contractors or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporation.

§ 13.7.3 Illinois Department of Labor Requirements and Prevailing Wage Act.

§ 13.7.3.1 The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Contractor shall ensure that any Subcontractors shall comply with the Illinois Prevailing Wage Act. Contractor and Subcontractors shall include in Bids the cost for the current prevailing wage. As changes are made in these prevailing wages, the Contractor and Subcontractors performing work on the project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements are the obligation of the Contractor and Subcontractors.

§ 13.7.3.2 To the extent that there are any violations of the Prevailing Wage Act and any demands are made upon the Owner, Contractor or Architect by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing work on the project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner, Contractor and Architect free and harmless from all costs incurred, directly or indirectly, by the Owner, Contractor or Architect in responding to and complying with demands made by the Department of Labor, or an aggrieved employee and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner, Contractor and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§ 13.7.3.3 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workman, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

§ 13.7.3.4 Not used

§ 13.7.3.5 Upon 2 business days' notice, the Contractor and each Subcontractor shall make available for inspection the records identified in the Prevailing Wage Act to the Owner in charge of the project, its officers and agents, and to the Director of Labor and his deputies and agents. Upon 2 business days' notice, the Contractor and each Subcontractor shall make such records available at all reasonable hours at a location within this State.

§ 13.7.4 Public Contract Fraud Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Public Contract Fraud Act (30 ILCS 545/0.01).

§ 13.7.5 Public Construction Contract Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Construction Contract Act (30 ILCS 557/1).

§ 13.7.6 Public Construction Bond Act. The Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Construction Bond Act (30 ILCS 550/0.01). If the Contractor furnishes material or labor on the project, or assume any Contracts for material or labor awarded or entered into by the Owner, Contractor first shall supply and deliver to Owner a bond conditioned upon the completion of the Contract, and the payment of such material and labor, as required by the Illinois Public Construction Bond Act. 30 ILCS 550/1 et seq.

§ 13.7.7 Public Works Preference Act. The Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Works Preference Act (30 ILCS 560/0.01).

§ 13.7.8 Employment of Illinois Workers on Public Works Act.

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The Contractor agrees to comply with and that that his Agreement is subject to and governed by the Illinois Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01).

§ 13.7.9 Public Works Contract Change Order Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Public Works Contract Change Order Act (50 ILCS 525/1).

§ 13.7.10 Local Government Professional Services Selection Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Local Government Professional Services Selection Act (50 ILCS 510/0.01).

§ 13.7.11 Veterans Preference Act. The Contractor agrees to comply with and that this Agreement is subject to and governed by the Illinois Veterans Preference Act (330 ILCS 55/0.01) that, in the employment and appointment to fill positions in the construction, addition to, or alteration of all public works undertaken or contracted for by the State, or by any political subdivision thereof, preference shall be given to persons who have been members of the armed forces of the United States or who, while citizens of the United States, were members of the armed forces of allies of the United States in time of hostilities with a foreign country, and have served under one or more of the following conditions: (1) the veteran served a total of at least 6 months, or (2) the veteran served for the duration of hostilities regardless of the length of engagement, or 3) the veteran served in the theater of operations but was discharged on the basis of a hardship, (4) the veteran was released from active duty basis of a hardship, or because of a service connected disability and was honorably discharged. But such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment. No political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such district, over residents thereof, who are not veterans.

§ 13.7.12 As used in this Section: "Time of hostilities with a foreign country" means any period of time in the past, present, or future during which a declaration of war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.

§ 13.7.12.1 "Armed forces of the United States" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Law 95-202 shall also be considered service in the Armed Forces of the United States for purposes of this Section.

§ 13.7.13 Drug Free Workplace. The Contractor certifies by the execution of this Contract that the Contractor will provide a drug free workplace in compliance with the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.), including provision of providing notifications, imposing sanctions, providing assistance with counseling, and complying with all other requirements of said Act.

§ 13.7.14 Bid Rigging and Rotating. The Contractor certifies that the Contractor is in compliance with Illinois law and not barred from bidding on the Contract as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the Criminal Code of 1961 (720 ILCS 5/33E).

§ 13.7.15 Concurrent with the execution of this Contract, the Contractor shall execute the Certificate of Eligibility.

§ 13.7.16 The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq., ("Act") prohibits any employee of the Contractor or any Subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the project. The Contractor/Subcontractor will comply with certification and other requirements regarding same.

§ 13.7.17 The Contractor must not be barred from entering into this contract because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the contract and allows the Owner to recover in a civil action all amounts paid to the Contractor.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

#### Intentionally Deleted.

~~§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:~~

- ~~1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~
- ~~2. An act of government, such as a declaration of national emergency, that requires all Work to be stopped;~~
- ~~3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- ~~4. The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~

~~§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.~~

~~§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~

### § 14.2 Termination by the Owner for Cause

#### § 14.2.1 The Owner may terminate the Contract if the Contractor

- ~~1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;~~
- ~~2. fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;~~
- ~~3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~
- ~~4. otherwise is guilty of substantial breach of a provision of the Contract Documents. If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days after the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if he submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if he fails to make prompt payment to Subcontractors or for materials or labor or otherwise breaches his obligations under any subcontract with a Subcontractor; or if a mechanic's or material man's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or if he otherwise violates any provision of the Contract Documents; then the Owner, without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, the Owner may, after giving the Contractor and the surety under the Performance~~

Bond and under the Labor and Material Payment Bond described in Section 11.5, seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days after the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Owner-Contractor Agreement pursuant to this Section 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds ~~costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the all costs to the Owner of completing the Work, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination. If such costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The amount Owner immediately upon the Owner's demand. The costs to the Owner of completing the Work shall include, but not be limited to, the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontracts, any additional interest or fees which the Owner must pay by reason of a delay in the completion of the Work, attorneys' fees and expenses, and any other damages, costs, and expenses the Owner may incur by reason of completing the Work or any delay thereof. . The amount, if any, to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, shall be certified by the Architect, upon application, in the manner provided in Section 9.4, and this obligation for payment shall survive termination of the Contract.~~

**§ 14.2.5** The Owner may, upon seven (7) days written notice to the Contractor, terminate the Agreement between the Owner and Contractor without cause. Upon written request and submittal of the appropriate documentation as required by the Owner, the Owner shall pay the Contractor for all Work performed by the Contractor to the date of termination that has been approved by the Owner. The Owner may, upon the Contractor executing such a confirmatory assignments as the Owner shall request, accept and assume all of the Contractor's obligations under all subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that the Contractor has incurred in good faith in connection with the Work. Upon receipt of notice of termination, the Contractor shall cease all operations on the date specified by the Owner, terminate subcontracts not assumed by the Owner, make no further orders of materials or equipment, complete Work not terminated (if any), and provide such reports as may be requested by the Owner and the Architect as to the status of the Work and the Work remaining to be completed. The Owner's right to terminate the Contract under this Section shall be in addition to, and not in limitation of, its rights to stop the Work without terminating the Contract.

### **§ 14.3 Suspension by the Owner for Convenience**

**§ 14.3.1** The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

**§ 14.4 Termination by the Owner for Convenience**

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

**§ 14.4.2** Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties to the Contract seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### § 15.1.3 Notice of Claims

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### § 15.1.4 Continuing Contract Performance

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

**§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given within seven (7) calendar days after the event giving rise to the Claim for additional time. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

**§ 15.1.6.3** The criteria on which the term "weather delays" shall be based on the normal average amount of precipitation received in the project areas, as recorded over a period of the last five (5) years by NOAA, National Climatic Data Center. Any extension of time due to unusually severe weather must be requested by the Contractor on the basis of documented records of the actual precipitation for a minimum period of three (3) months' time, compared with the normal average for the area. Also, the criteria shall include the number of excessive precipitation days over the same period and whether or not the Contractor's force worked on said days or any stage of construction was affected.

**§ 15.1.6.4** Delay caused by any Subcontractor shall be the responsibility of the Contractor. The Contractor shall, therefore, ensure that all Subcontractors at all time provide sufficient personnel, equipment and materials to substantially complete the Work in the time specified herein.

**§ 15.1.6.5** Where a delay occurs which is beyond the Contractor's control, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work but without any obligation to bear any cost. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

**§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other waives claims against the Owner and Architect for consequential damages arising out of or relating to this Contract. This mutual-waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the 1. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual-waiver is applicable, without limitation, to all consequential damages due to either party's Contractor's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. ~~The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties ~~but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution subject to litigation.~~

**§ 15.2.6** ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~  
Intentionally Deleted.

**§ 15.2.6.1** ~~Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

**§ 15.3.2** ~~The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event,~~

mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

### **ARTICLE 16 LIMIT TO AVOID INCORPORATION OF RESPONSIBILITY BY REFERENCE**

**§ 16.1** Where any specification which is incorporated herein by reference, through the words "and/or as directed by the Architect," or phrases having a similar effect appear to give the Architect the right to direct something other than that specified, the Architect has in fact no such right to except as it may be established in specific instances in portions of this Instruments of Service other than in said specifications.

## **ARTICLE 17 INCORPORATION OF CONTRACT TERMS WITH SUBCONTRACTORS**

**§ 17.1** Contractor agrees that s/he will be responsible to incorporate all of the terms and conditions herein, including all amendments to this Contract, with any and all of the Subcontractors as well as any Subcontractors retained by Subcontractors. Contractor acknowledges that it is the Owner's intent that all of the terms and conditions herein, including all amendments to this Contract, will be adhered to by the Contractor and all Subcontractors performing any Work on the Project.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.





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June 1, 2023

Frank DeSimone  
Village of Bensenville  
12 South Center St.  
Bensenville, IL 60106

Re: **Claim No.:** **68489**  
Bond No.: JCN7446428  
Principal: Empire Construction Company  
Company: Old Republic Surety Company  
Obligee: Village of Bensenville  
Project: 22-044 Senior Center Buildout – Village Hall

Dear Mr. DeSimone:

As you are aware, Old Republic Surety Company (“Old Republic”) issued performance and payment bonds for Empire Construction Company (“Principal”) on the above-referenced project. The bonds name the Village of Bensenville as obligee (“Obligee”).

Old Republic has been advised that the Principal is unable to complete the project and is out of business, effective immediately. Under these circumstances, Old Republic hereby requests that the Obligee release no further contract funds to the Principal or any other party/entity without our consent. Our demand is premised upon the fact that the contract funds are Old Republic’s collateral under its rights of equitable subrogation. Additionally, and pursuant to a written agreement between the Principal and Old Republic, the contract funds are expressly dedicated as trust funds for the purpose of satisfying the bonding obligations on the project. The Obligee’s improper release of the contract funds may result in a release of the performance bond in whole or in part. Our goal in making this demand is to ensure that the bonded contract proceeds are applied in accordance with their intended purpose, which is the payment or proper claimants and completion of the bonded work.

Please be advised that Old Republic Surety Company strictly reserves all rights and defenses available under the bond, the contract documents, applicable law, and/or equity. Neither this letter nor any responses by Old Republic Surety Company to the matters described herein constitute an estoppel, waiver, or modification of any such rights and defenses. Subject to this strict and continuing reservation of rights and defenses, we invite you to keep us informed and appreciate your efforts in doing so.

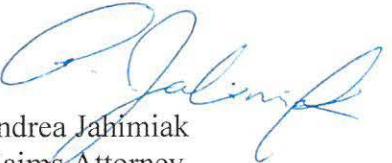


OLD REPUBLIC INSURANCE GROUP

As always, if you have any questions or concerns regarding the matters set forth herein, please do not hesitate to contact me.

Sincerely,

OLD REPUBLIC SURETY COMPANY



Andrea Jahimiak  
Claims Attorney  
ajahimiak@orsurety.com  
(262) 797-2658



BENSENVILLE

Bill To VH Ship To PW  
**VILLAGE OF BENSENVILLE**  
 ATTN: ACCOUNTS PAYABLE  
 12 SOUTH CENTER STREET  
 BENSENVILLE, IL 60106-1987  
 PHONE: (630) 766-8200

Vendor 2096  
**EMPIRE CONSTRUCTION COMPANY**  
 214 W OHIO STREET  
 4TH FLOOR  
 CHICAGO, IL 60654

**Purchase Order**

Fiscal Year 2023

Page 1 of 1

**THIS NUMBER MUST APPEAR ON ALL INVOICES,  
PACKAGES AND SHIPPING PAPERS.**

Purchase Order Number **20230994**  
 Purchase Order Date **04/18/2023**  
 Department **PUBLIC WORKS**

Please enter our order in accordance with prices, delivery  
 and specifications given. Please include purchase order  
 number on all correspondence.

VENDOR PHONE NUMBER	VENDOR FAX NUMBER	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
		2096	20231146	Jessica Juarez	

**NOTES**

R-9-2023 SENIOR CENTER CONSTRU

ITEM #	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	R-9-2023 SENIOR CENTER CONSTRUCTION PROJECT	812,500.0000	EACH	\$1.0000	\$812,500.00

GL #: 31080800 - 591000 - 21601

\$812,500.00

R 4-18-23 Application # 1 \$ 130,747.50

RECEIVED

F. J. S.  
RECEIVED**CONDITIONS - READ CAREFULLY**

1. The right is reserved to cancel this order if not filled within the contract time, if specified. 2. The conditions of this order are not to be modified by any verbal understanding. 3. Acceptance of this order includes Acceptance of all terms, prices, delivery instructions, specifications and conditions stated. 4. INVOICES AND PACKAGES MUST BEAR THIS ORDER NUMBER. 5. THE CITY ASSUMES NO RESPONSIBILITY FOR GOOD DELIVERED WITHOUT THE AUTHORITY OF A PROPERLY EXECUTED PURCHASE ORDER.

**PLEASE FORWARD ALL INVOICES TO:**

Village of Bensenville  
 ATTN: Accounts Payable  
 12 S. Center Street, Bensenville, IL 60106

IMPORTANT - To receive payment all invoices and shipping labels must show purchase order number.



Village Manager

Total Ext. Price	\$812,500.00
Purchase Order Total	\$812,500.00

DEPARTMENT COPY

**Purchase Order**

Fiscal Year 2023

Page 1 of 1

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Purchase Order Number

**20230994**

Purchase Order Date

04/18/2023

Department

PUBLIC WORKS

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 ATTN: ACCOUNTS PAYABLE  
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 BENSENVILLE, IL 60106-1987  
 PHONE: (630) 766-8200

Vendor 2096  
**EMPIRE CONSTRUCTION COMPANY**  
 214 W OHIO STREET  
 4TH FLOOR  
 CHICAGO, IL 60654

VENDOR PHONE NUMBER	VENDOR FAX NUMBER	VENDOR NUMBER	REQUISITION NUMBER	BUYER NAME	DELIVERY REFERENCE
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**NOTES**

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R. 5-12-23 Application # 2 \$1 105,687<sup>00</sup>

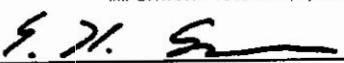
RECEIVED  
May 12 2023  
FIRE DEPARTMENT

**CONDITIONS - READ CAREFULLY**  
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PLEASE FORWARD ALL INVOICES TO:

Village of Bensenville  
 ATTN: Accounts Payable  
 12 S. Center Street, Bensenville, IL 60106

IMPORTANT - To receive payment all invoices and shipping labels must show purchase order number

  
 Village Manager

Total Ext. Price	\$812,500.00
Purchase Order Total	\$812,500.00

DEPARTMENT COPY



BENSENVILLE

Bill To VH Ship To PW  
**VILLAGE OF BENSENVILLE**  
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**Purchase Order**

Fiscal Year 2023

Page 1 of 1

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 Purchase Order Date **04/18/2023**  
 Department **PUBLIC WORKS**

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R 5-12-23 Application # 2 \$1 105,687<sup>00</sup>  
 5-23-2023 INVOICE # 22 \$ 40,000

**CONDITIONS - READ CAREFULLY**

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PLEASE FORWARD ALL INVOICES TO

Village of Bensenville  
 ATTN: Accounts Payable  
 12 S. Center Street, Bensenville, IL 60126

IMPORTANT - To receive payment all invoices and shipping labels must show purchase order number

E. J. S.

Village Manager

Total Ext. Price	\$812,500.00
Purchase Order Total	\$812,500.00

DEPARTMENT COPY