

**ORDINANCE NO. 24-32**

**AN ORDINANCE APPROVING PROFESSIONAL FIRM PURSUANT TO RFQ FOR SPACE NEEDS STUDY FOR MUNICIPAL COMPLEX**

**WHEREAS**, the Village of Chatham (“Village”) is an Illinois Municipal Corporation existing and operating under the Illinois Municipal Code and the laws of the State of Illinois; and

**WHEREAS**, the Village solicited qualifications from professional consulting firms for a space needs study for a new mixed-use municipal complex that will include the Village’s governmental departments along with new leasable office and retail space in one building and site development (“RFQ”); and

**WHEREAS**, in the RFQ, the Village indicated its intent to select a professional consulting firm with a strong background in the planning of government facilities, including municipal hall and police facilities and whose combination of qualified experience and personnel will provide timely, cost-effective, and professional planning services; and

**WHEREAS**, the Village opened the RFQ responses on July 9, 2024 and subsequently reviewed and evaluated the qualifications in accordance with 50 ILCS 510/1 et seq.; and

**WHEREAS**, the Village determined that the professional firm most qualified to perform the services requesting in the RFQ FGM Architects, Inc.; and

**WHEREAS**, the Board of Trustees of the Village believe it is in the best interest of the Village to accept the RFQ proposal from FGM Architects, Inc. in the amount of \$56,625.00.

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois, as follows:

**Section 1.** Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Resolution as if fully set forth in this Section 1.

**Section 2. Acceptance of Proposal.** The Village hereby approves the proposal from FGM Architects, Inc. in the amount of \$56,625.00 as shown the Agreement and Contract Conditions attached and incorporated as **Exhibit A**. Any and all proposals, bids, and parts thereof not explicitly approved by this Ordinance are hereby rejected. The Village authorizes the Village Manager and/or Village President, or designee of either, to execute any documents necessary to accept the proposal contemplated herein.

**Section 3. Severability.** In the event a court of competent jurisdiction finds this ordinance or any provision hereof to be invalid or unenforceable as applied, such finding shall not affect the validity of the remaining provisions of this ordinance and the application thereof to the greatest extent permitted by law.

**Section 4. Repeal and Savings Clause.** All ordinances or parts of ordinances in conflict herewith are hereby repealed; provided, however, that nothing herein contained shall affect any rights, actions, or causes of action which shall have accrued to the Village of Chatham prior to the effective date of this ordinance.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

	AYE	NAY	ABSTAIN	ABSENT
KRISTEN CHIARO	✓			
MEREDITH FERGUSON	✓			
JOHN FLETCHER				✓
BRETT GERGER	✓			
TIM NICE	✓			
CARL TRY	✓			
DAVE KIMSEY				
TOTAL	5	0	0	1

**APPROVED** by the President of the Village of Chatham, Illinois this 27<sup>th</sup> day of  
August, 2024.

  
Dave Kimsey, Village President

Attest:

  
Dan Wolden, Village Clerk

**EXHIBIT A**

 **AIA** Document B101<sup>®</sup> – 2017**Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Twenty-Seventh day of August in the year Two Thousand Twenty-four  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

Village of Chatham  
116 East Mulberry Street  
Chatham, Illinois 62629  
Telephone Number: 217.697.5809

and the Architect:  
*(Name, legal status, address and other information)*

FGM Architects, Inc.  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269  
Telephone Number: 618.624.3364  
Fax Number: 618.624.3369

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

New Municipal Complex – Village Hall, Police Department, Retail / Commercial Center and Improvements to Veteran's Memorial Park

FGMA Project Number: 24-xxxx

The Owner and Architect agree as follows:

This Agreement shall serve as a Master Agreement establishing the terms of service for all Task Orders assigned by the Owner to the Architect. Owner and Architect will execute separate Project Authorizations to this Agreement which establish specific parameters for each Task Order assigned by the Owner to the Architect.

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

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

## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. and Exhibit A, the Project Authorization(s) for the Project. To the extent of any inconsistency, conflict or discrepancy between the Master Agreement and the Project Authorization, the Project Authorization shall control. "Project" as used herein shall mean the work authorized by the Project Authorization(s), Exhibit A. *(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project: *(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

A Project Authorization(s) to this Agreement shall incorporate some or all of the following Initial Information:

- .1 The Owner's program for the Project.
- .2 The Project's physical characteristics.
- .3 The Owner's budgeted Total Project Cost that includes Cost of the Work and Indirect Construction Cost, including, but not limited to administrative costs, professional fees, site investigation, furniture and equipment.
- .4 The Owner's anticipated schedule for the Project.
- .5 The Owner's intended procurement methodology for latter phases of the Project.
- .6 The Owner's intended sustainable objectives for the Project.
- .7 Other Project requirements.
- .8 Additional Owner-authorized representatives.
- .9 Consultants to be retained by the Owner as required.
- .10 Additional Architect-identified representatives.
- .11 Consultants to be retained by the Architect as required.
- .12 Other Initial Information.

For services other than facility and life safety studies and surveys, the Owner and Architect will jointly develop the building program for individual projects as they are assigned in writing by the Owner's representative.

**§ 1.1.2** The Project's physical characteristics: *(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

See Exhibit A, Project Authorization(s) for the Project.

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1: *(Provide total and, if known, a line item breakdown.)*

See Exhibit A, Project Authorization(s) for the Project.

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be determined by mutual agreement and incorporated in a Project Authorization(s).

.2 Construction commencement date:

If appropriate, shall be determined on individual projects as assigned by the Owner and incorporated in a Project Authorization(s) exhibit to this Agreement.

.3 Substantial Completion date or dates:

If appropriate, shall be determined on individual projects as assigned by the Owner and incorporated in a Project Authorization(s) exhibit to this Agreement.

.4 Other milestone dates:

To be determined by mutual agreement and incorporated in a Project Authorization(s).

**§ 1.1.5** The Owner intends the following procurement and delivery method for the Project: *(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)*

To be determined by mutual agreement and incorporated into a Project Authorization(s).

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project: *(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

If appropriate, shall be determined on individual projects as assigned by the Owner and incorporated in a Project Authorization(s) exhibit to this Agreement.

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Architect may complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective. Alternatively, and if applicable, the Owner and Architect will define the terms, conditions and services related to the Owner's Sustainable Objective within a Project Authorization(s) exhibit this this Agreement.

**§ 1.1.7** The Owner identifies the following representative in accordance with Section 5.3:

*(List name, address, and other contact information.)*

Mr. Patrick M. McCarthy  
Village Manager  
116 East Mulberry Street  
Chatham, Illinois 62629  
Telephone Number: 217.697.5809

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who may be required to review the Architect's submittals to the Owner are as follows:  
*(List name, address, and other contact information.)*

To be determined by mutual agreement and incorporated in a Project Authorization(s).

§ 1.1.9 If appropriate, the Owner shall retain the following consultants and contractors, which shall be incorporated in a Project Authorization(s) exhibit to this Agreement as directly-engaged by the Owner: *(List name, legal status, address, and other contact information.)*

- .1 Land Survey
- .2 Geotechnical Engineer
- .3 Environmental Consultants
- .4 Natural Resource Consultants
- .5 Historical Archeologists
- .6 Traffic Consultant
- .7 Cost Consultant – if in addition to that as may be provided by the Architect
- .8 Construction Testing Contractor
- .9 Building Code Plan Reviewer
- .10 Building Code Site Inspector
- .11 Observer for Called Inspections

§ 1.1.10 The Architect identifies the following representatives in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

Mr. David Kehm – Principal-in-Charge  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269  
Telephone Number: 618.624.3364  
Fax Number: 618.624.3369

Mr. Joshua N. Mandell – Subject Matter Expert  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269  
Telephone Number: 618.624.3364  
Fax Number: 618.624.3369

§ 1.1.11 If appropriate, the Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
*(List name, legal status, address, and other contact information.)*

§ 1.1.11.1 If appropriate, consultants retained under Basic Services and shall be incorporated in a Project Authorization exhibit to this Agreement:

- .1 Construction Cost Estimator and Pre-Construction Advisor:

init.

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User Notes:

(1668433498)



CORE Construction | Midwest  
601 Southwest Water Street, Suite 101  
Peoria, Illinois 61602

- .2 Structural Engineer:  
TBD
- .3 Mechanical Engineer:  
TBD
- .4 Plumbing Engineer  
TBD
- .5 Fire Protection Engineer  
TBD
- .6 Electrical Engineer:  
TBD

§ 1.1.11.2 If appropriate, Consultants shall be retained under Additional Services and shall be incorporated in a Project Authorization(s) exhibit to this Agreement:

- .1 Civil Engineer
- .2 Landscaping Consultant or Architect.
- .3 Kitchen / Food Service Consultant.
- .4 Reserved
- .5 Consultants for specialized studies to obtain certification of sustainable design by US Green Building Council (LEED), Green Globes or similar organizations.
- .6 Interior Design for furniture, fixture and equipment.
- .7 Building Code Plan Reviewer and Building Code Site Inspector.
- .8 Technologies / Low-Voltage (RCDD) and Security design
- .9 Consultant for Mechanical and Electrical commissioning.
- .10 Acoustical Consultant.
- .11 Observer for Called Inspections.

§ 1.1.12 Other Initial Information on which the Agreement is based:

If appropriate, shall be determined on individual projects as assigned by the Owner and incorporated in a Project Authorization(s) exhibit to this Agreement.

Agreement incorporates by reference the Owner's original solicitation for Architects, dated 10 June 2024, and FGMA's response to same, dated 09 July 2024.

§ 1.2 The Owner and Architect may rely on the Initial Information, including the information incorporated in a Project Authorization(s). Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall, by subsequent written agreement, appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation as maybe necessary and agreed upon by the Parties. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary and agreed upon by the Parties, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model 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 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement for any Project Authorization issued pursuant thereto. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative(s) authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$ 1,000,000 ) for each occurrence and Two Million Dollars (\$ 2,000,000 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars (\$ 1,000,000 ) combined single limit and aggregate for bodily injury, death of any person, and property damage covering non-owned and rented vehicles operated by the Architect.

§ 2.5.3 The Architect 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 liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, 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.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with Statutory limits not less than Five Hundred Thousand Dollars (\$ 500,000 ) each accident, disease, death.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) per claim and Three Million Dollars (\$ 3,000,000 ) in the aggregate.

§ 2.5.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 As required by Project Authorization exhibit to this Agreement, the Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings reasonably requested by the Owner, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner, if applicable, the Construction Manager and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner, if applicable the Construction Manager and the Owner's consultants. The Architect shall provide prompt written notice to the Owner only if the Architect becomes aware of any error, omission, or inconsistency in such services or information, however, the Architect assumes no duty to discover such errors, omissions or inconsistencies.

§ 3.1.3 As soon as practicable after execution of the Project Authorization, the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and a reasonable time for approval of submissions by authorities having jurisdiction over the Project. The Owner shall render decisions in a timely manner so as to not adversely affect the schedule or cause the schedule to be exceeded. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, or by the subsequent written agreement of the parties, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive, design change or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall use professional care to respond to applicable written publicly available design requirements imposed by those authorities and entities having jurisdiction over the design of the Project. The Architect shall not be responsible for additional costs incurred because of a reasonable difference of opinion or interpretation of applicable code requirements with that of such governmental authorities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 If the Architect's services involve making changes to an existing facility, the Owner shall furnish documentation, drawings and information on the existing facility upon which the Architect may rely for accuracy and completeness. Unless specifically authorized or confirmed in writing by the Owner, the Architect shall not be required to perform or to cause to be performed any destructive testing or investigation of concealed or unknown conditions. In the event the documentation, drawings or information furnished by the Owner is inaccurate or incomplete, all resulting costs and expenses, including the cost of Additional Services of the Architect, shall be borne by the Owner. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect and its consultants from and against all claims, liabilities, damages, losses, costs and expenses, including attorney's fees, arising out of or resulting from the drawings, documentation and information furnished by the Owner.

§ 3.1.8 If the Project involves remodeling and/or rehabilitation of an existing structure, certain assumptions regarding existing conditions are required to be made. Since some of these assumptions may not be verifiable within Owner's budget or without destroying otherwise adequate or serviceable portions of the Project, the Owner agrees that, except

for specific tasks identified for the Architect to perform under the Agreement, the Owner shall reimburse the Architect as an Additional Service for changes, modifications, additions or alterations to the Construction Documents which may arise or result from unforeseen or concealed conditions. The Owner shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the Architect and its consultants from and against all claims, damages, liabilities, losses, costs, damages and expenses, including attorney's fees, arising from unforeseen or concealed conditions.

**§ 3.1.9** The LEED Green Building Rating System and other similar environmental guidelines (collectively "LEED Guidelines") utilize certain design and usability recommendations on a project in order to promote an environmental friendly and energy efficient facility. While the Architect shall interpret and use these LEED Guidelines with professional care when LEED Guidelines are agreed by Owner to be applied to the Project, the Design-Builder acknowledges and understands that LEED Guidelines are subject to various and possibly contradictory interpretations. Furthermore, compliance may involve factors beyond the control of the Architect including, but not limited to, the Owners' use and operation of the completed Project. The Architect does not warrant or represent that the Project will actually achieve LEED certification or that the energy savings and cost estimates relating to building or equipment operation will be the actual operational energy use or cost. Likewise, the Architect shall not be responsible for any environmental or energy shortcomings arising out of the Owner's use and operation of the completed Project.

### **§ 3.2 Schematic Design Phase Services**

**§ 3.2.1** As required by Project Authorization exhibit to this Agreement, the Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

**§ 3.2.2** The Architect shall prepare, solely for use by the Owner, a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to gain a general understanding of the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

**§ 3.2.3** The Architect shall present its preliminary evaluation to the Owner and, if applicable, the Construction Manager shall discuss with the Owner and if applicable the Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

**§ 3.2.4** Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

**§ 3.2.5** Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

**§ 3.2.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

**§ 3.2.5.2** The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

**§ 3.2.6** The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with and subject to Sections 6.2 and 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner and request the Owner's approval. Upon request of Owner's approval of the Schematic Design Documents, the Architect shall commence the Design Development Phase.

### § 3.3 Design Development Phase Services

§ 3.3.1 As required by Project Authorization exhibit to this Agreement, Design Development Phase Services shall be based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Upon receipt of Owner's approval of the Design Development Documents, the Architect shall commence the Construction Documents Phase.

§ 3.3.4 The Architect shall provide one (1) exterior design concept to the Owner for approval as part of Basic Services. Any additional design concepts shall be charged as an Additional Service in accordance with Article 4.3.

### § 3.4 Construction Documents Phase Services

§ 3.4.1 As required by Project Authorization exhibit to this Agreement, Construction Documents Phase Services shall be based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall use professional care to incorporate the written publicly available design requirements of governmental authorities having jurisdiction over the design of the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval. Upon receipt of Owner's approval of the Construction Documents, the Architect shall commence the Bidding/Negotiation Phase.

§ 3.4.6 The Owner and Architect acknowledge that, given the nature of the design and construction process, certain inconsistencies, conflicts, errors and/or omissions may exist in the Construction Documents prepared by the Architect. It is further acknowledged and agreed that as long as the number and type of such inconsistencies, conflicts, errors and/or omissions are reasonable and consistent with reasonable skill and care, such inconsistencies, conflicts, errors

and/or omissions shall not constitute a material breach of this Agreement or a deviation from the applicable standard of care as set forth in the Illinois Joint Committee on Administrative Rules, Title 68, Chapter VII, Subchapter b, Part 1150, Section 1150.90, Subsection a.2, which reads as follows: An architect engaging in the practice of architecture shall act with reasonable care and competence, and shall apply the technical knowledge and skill that are ordinarily applied by licensed architects of good standing, practicing in the same locality. Notwithstanding the foregoing, the Architect and its consultants shall modify or correct any errors or omissions in the Construction Documents.

**§ 3.4.7** If, as a result of the Architect's failure to comply with the standard of care set forth in this Agreement, an error in the Construction Documents results in additional construction costs to the Owner that exceeds the amount referred in Section 6.1.1, the Architect shall be responsible for compensating the Owner for additional construction costs for which the Architect is legally responsible in accordance with applicable law.

**§ 3.4.8** All costs associated with the Architect's negligent errors or omissions which constitute "betterment" or "value added" to the Owner shall be borne by the Owner to the extent of such betterment or value added.

### **§ 3.5 Procurement Phase Services**

#### **§ 3.5.1 General**

As required by Project Authorization exhibit to this Agreement, the Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

#### **§ 3.5.2 Competitive Bidding**

**§ 3.5.2.1** Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

**§ 3.5.2.2** The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the electronic reproduction and distribution of Bidding Documents to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders; and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

**§ 3.5.2.3** If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider written requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

#### **§ 3.5.3 Negotiated Proposals**

**§ 3.5.3.1** Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

**§ 3.5.3.2** The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the electronic reproduction and distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors; and
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

**§ 3.5.3.3** If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider written requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

## **§ 3.6 Construction Phase Services**

### **§ 3.6.1 General**

As required by Project Authorization(s) exhibit to this Agreement the Architect comply with the following under this Article 3.6.

**§ 3.6.1.1** The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction to the extent required by this Agreement. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement in writing to include such modifications. The terms and conditions of this Agreement shall govern and control the Architect’s services on the Project.

**§ 3.6.1.2** The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for jobsite safety, including, but not limited to safety precautions and programs in connection with the Work or compliance with any safety laws, standards, rules, regulations or guidelines governing the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

**§ 3.6.1.3** Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

**§ 3.6.1.4** The Architect shall not be responsible for any aspect of design, procurement, erection, construction, monitoring, observation or use of any scaffolds, hoists, cranes, ladders, bracing or supports of any type on the Project, whether temporary or permanent, not shall the Architect have responsibility for construction barricades, barriers, safety cones, tape, warning, signage, canopies or other similar devices of any kind, whether for vehicular or pedestrian traffic or otherwise on or around the Project site. No provision of this Agreement shall be interpreted to confer upon the Architect any duty owed under common law, statute or regulation to construction workers or any other person regarding safety or the prevention of accidents at the Project.

### **§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at a mutually agreed upon number of site visits per project 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 completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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.

**§ 3.6.2.2** The Architect has the authority to recommend to the Owner that the Owner reject Work that does not conform to the Contract Documents. Subject to Owner’s written approval, whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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. The Architect shall not be responsible for defects or deficiencies of the Contractor, Subcontractors, or suppliers resulting from their failure to complete Work in accordance with the Contract Documents.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents. In no event shall the Architect be liable for decisions made in such capacity if made in good faith.

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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 general accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule when issued by the Contractor and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

§ 3.6.4.2 The Architect shall review or take other appropriate action only upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, that are required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance specific details, of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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. Regardless of the review, notations or markups of the Architect on any submittal, shop drawing or product data, neither the Architect nor its consultants shall be responsible for any aspect of the submittal, shop drawing or product data which does not comply with the requirements of the Contract Documents, responsibility for which rests solely with the Contractor.



§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect or its consultants shall specify the appropriate performance and design criteria that such services must satisfy. Subject to the terms of Article 3.6.4.2, the Architect or its consultants, shall review Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect or its consultants for informational purposes only. The Architect or its consultants review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect and its consultants shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals and shall have no responsibility for any errors or omissions in the services or documentation provided by the Contractor's design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 Changes in the Work

§ 3.6.5.1 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work under Article 3.6.5.1.

### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct on site reviews to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final on-site review indicating the Work observed by the Architect complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's reviews shall be conducted with the Owner to check apparent (overall) conformance of the Work observed with the requirements of the Contract Documents and to verify the apparent accuracy and completeness of the punch list submitted to the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon written request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**§ 4.1 Supplemental Services**

§ 4.1.1 The services listed below are **NOT included in Basic Services** but may be required for the Project as indicated in Project Authorization exhibit to this Agreement or a separate AIA contract document. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect’s responsibility and addressed in a Project Authorization. The Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in a Project Authorization, the parties agree that the listed Supplemental Service is not being provided.

*(Designate the Architect’s Supplemental Services and the Owner’s Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*

Supplemental Services	Responsibility <i>(Responsibility of the Architect, Owner, or not provided and separately addressed in a Project Authorization or AIA Agreement)</i>
§ 4.1.1.1 Programming	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.2 Multiple preliminary designs	Architect: as provided under a Project Authorization
§ 4.1.1.3 Measured drawings	Not Provided
§ 4.1.1.4 Existing facilities surveys	Not Provided
§ 4.1.1.5 Site evaluation and project feasibility	Architect: as provided under a Project Authorization
§ 4.1.1.6 Building Information Modeling	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.8 Civil engineering	Architect or Owner: as provided under a Project Authorization
§ 4.1.1.9 Landscape design	Architect: as provided under a Project Authorization
§ 4.1.1.10 Architectural interior design	Architect: as provided under a Project Authorization
§ 4.1.1.11 Value analysis	Architect: as provided under a Project Authorization
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Architect or Owner: as provided under a Project Authorization
§ 4.1.1.13 On-site project representation	Not Provided
§ 4.1.1.14 Conformed documents for construction	Architect: as provided under a Project Authorization
§ 4.1.1.15 As-designed record drawings	Architect
§ 4.1.1.16 As-constructed record drawings	Furnished by Owner’s Prime Contractor for the Work
§ 4.1.1.17 Post-occupancy evaluation	Architect: as provided under a Project Authorization

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§ 4.1.1.18 Facility support services	Not Provided
§ 4.1.1.19 Tenant-related services	Not Provided
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect: as provided under a Project Authorization
§ 4.1.1.21 Telecommunications/data design	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.22 Security evaluation and planning	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.23 Commissioning	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3, included energy modeling	Architect: as provided under a Project Authorization
§ 4.1.1.25 Fast-track design services	Not Provided
§ 4.1.1.26 Multiple bid packages	Architect: as provided under a Project Authorization
§ 4.1.1.27 Historic preservation	Not Provided
§ 4.1.1.28 Furniture, furnishings, and equipment design	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.29 Alternates	Architect: as provided under a Project Authorization
§ 4.1.1.30 Called Inspections	Architect and Owner: as provided under a Project Authorization
§ 4.1.1.31 Planning and Zoning Assistance:	Architect: as provided under a Project Authorization
§ 4.1.1.32 ICC-500 Peer Review	Architect and Owner: as provided under a Project Authorization

#### § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below. *(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

- .1 Programming: if applicable, the Architect shall prepare a document that outlines spaces, features and functions required and / or desired in a renovated or new facility. These programming services generally are to develop and support a value system consisting of; concept budget, schedule, special requirements, systems, space allocation, spatial hierarchy and spatial relationships. The space allocation and relationships consider the number, size, type of space, groupings and spatial adjacencies. Special requirements considerations may include but not limited to items, such as structural, mechanical, electrical, lighting, acoustical, FF&E, technology, security, or site development.
- .2 Multiple Preliminary Designs: if applicable, the Architect shall develop multiple graphic options for the Owner's consideration for building concept, scope and space adjacencies. Space adjacencies show the relationship between spaces and functions.
- .3 Measured Drawings: will not be provided.
- .4 Existing Facilities Surveys: will not be provided.
- .5 Site Evaluation and Project Feasibility: if applicable, the Architect shall prepare a document that outlines the provided services. Criteria shall be developed for site and building evaluation comparison, conceptual drawings, budget and site usage options.
- .6 Building Information Modeling: Establish the parties' expectations for the use of digital data and building information modeling (BIM) on the project and provide a process for developing the detailed protocols and procedures that will govern the development, use, transmission and exchange of digital data and BIM on the project. In addition, if applicable, development of Building Information Models for post construction use.
- .7 Development of Building Information Models for post construction use: will not be provided.

- .8 Civil Engineering: the Owner shall have a separate contract with a Civil Engineer. The Engineer shall provide the design, engineering bidding and construction administration for both on-site and off-site civil engineering. The coordination of the Civil Engineer's service with the Architect's Engineers and consultant is a part of Basic Services.
- .9 Landscape Design: provide for the design, selection, bidding and construction administration for landscaping work.
- .10 Architectural Interior Design: if applicable, the interior design building components that are fixed and a part of the building interior is a part of Basic Services. Those interior design building components of floor covering, wall coverings, ceilings and fixed casework.
- .11 Value Analysis: several building systems/component options shall be developed within a building model to compare criteria such as; life cycle, energy cost, maintenance, operational cost, etc.
- .12 Detailed Cost Estimating: a detailed estimate shall include developing a material and labor cost for each item within a building component of the building project.
- .13 On-Site Project Representation: will not be provided.
- .14 Conformed Construction Documents: if applicable, the Architect shall provide drawings and specifications that have been revised to incorporate addenda, changes and/or modifications. Any discrepancy between the "Conformed Construction Documents" and the "Bidding Documents", the "Bidding Documents" shall control.
- .15 As-Designed Record Drawings: if applicable, the Architect will submit one paper copy and one electronic copy of the documents to the Owner.
- .16 As-Constructed Record Drawings: if applicable, a final set of documents incorporating all contractor revisions to the project as it was constructed would be produced.
- .17 Post Occupancy Evaluation: if applicable, the Architect shall meet with Owner's representatives one year after the facility has been occupied to walk-thru the facility and discuss items of concern. This service is a part of Basic Services.
- .18 Facility Support Services: will not be provided.
- .19 Tenant-related Services: will not be provided.
- .20 Coordination of Owner's Consultants: coordinate work of the consultants retained directly by the owner under separate contract from the Architect's consultants. If applicable, the Architect shall coordinate the Civil Engineer's service with Architect's Engineer and Consultants as a part of the Architect's Basic Services.
- .21 Telecommunications / Data Design: provide services for the design, selection, bidding and construction administration to telecommunication and data equipment.
- .22 Security Evaluation and Planning :provide one or more of these services that include; Facility Analysis, Risk Assessment and Security Design Concept.
- .23 Commissioning: provide verification that the installed mechanical and electrical systems are functioning and performing within the design criteria.
- .24 Extensive Environmentally Responsible Design: if applicable, the Architect and Consultants shall provide services for the design and documentation of extensive environmentally responsible design features that are pursued short of LEED certification. Energy Modeling per se will not be performed (defined as: the process of building highly detailed computer models of energy systems in order to analyze them. With outputs to include detailed system integration, greenhouse gas emissions, cumulative financial costs, natural resource use, and energy efficiency of the system under investigation). Rather, design options (good / better / best), and – to extent authorized in a Project Authorization – engineering and design / documentation shall be performed, in order to guide the Owner in evaluating, selecting and constructing an HVAC system, envelope and other aspects of the new work which would provide enhanced energy efficient design and operations LEED® Certification : if applicable, the Architect and Consultants shall provide specialized studies, reports, engineering and documentation and provide other services that are required for sustainable design by US Green Building Council (LEED), Green Globes or similar organizations for possible certification.
- .25 Fast-track design services: will not be provided.
- .26 Multiple Bid Packages: if applicable, the Architect and Consultants shall develop and issue multiple bid packages for proposals to be developed and submitted by qualified Contractors. The Architect and Consultants shall further assist the Owner in managing the bid package bidding process, and in evaluating and recommending action in response to submitted bid proposals received by the Owner.
- .27 Historic Preservation: will not be provided.

- .28 Furniture, Furnishings & Equipment Design: provide design services, selection, bidding and overseeing the installations of furniture and equipment.
  - .29 Alternates: if applicable, the Architect shall provide additional architectural and engineering service to incorporate into the Construction Documents bidding options for substitution and/or addition of materials, spaces and/or systems.
  - .30 Called Inspections: if applicable, the Architect and Engineer shall review components of construction when notified by the Contractor in accordance with the building authority.
  - .31 Planning and Zoning Assistance: If applicable, the Architect and Consultants shall provide this service.
  - .32 ICC-500 Peer Review, International Code Council / National Storm Shelter Association, Standard for the Design and Construction of Storm Shelters, version as established by Authorities Having Jurisdiction over the Project. Conduct a peer review of the project. Peer review shall be conducted by an independent registered design professional in accordance with reference standard.
- 106.1 General. Construction of storm shelters and installation of all equipment shall be subject to inspections in accordance with the applicable building code.

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below. *(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

As mutually agreed upon or as addressed in a Project Authorization(s).

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™-2017, Sustainable Projects Exhibit or in a Project Authorization(s), attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, more than one (1) public presentation, community meeting or hearing other than Owner's Building Committee meetings; Owner's Council meetings exceeding one (1) per month shall be an additional service. This includes Planning and Zoning, Conditional Use Permit hearings, utility agency presentations (see below) and similar.
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.
- .12 Preparation for and/or attendance at more than one (1) meeting with each utility provider.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.

- .1 Reviewing a contractor's submittal out of sequence from the initial Project submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Up to two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 ( ) visits to the site by the Architect during construction shall be determined on individual projects as assigned and incorporated in a Project Authorization(s) exhibit to this Agreement.
- .3 One ( 1 ) review for any portion of the Work to determine whether such portion of the Work appears substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) review for any portion of the Work to determine final completion.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by the individual project's Project Authorization to this Agreement have not been completed within the time indicated in the individual project's Project Authorization **OR** thirty ( 30 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement or in a Project Authorization exhibit to this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs including design changes necessitated by unforeseen conditions or concealed conditions or a reasonable number of conflicts, errors or inconsistencies in the Contract Documents within the standard of care set forth herein. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final

completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, or as required in a Project Authorization(s) attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor 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.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

§ 5.16 The Owner shall contract separately for the consulting services in this Article 5. Unless otherwise indicated herein, the services to be provided by Owner's consultants shall be performed by licensed professionals who shall affix their seals on the appropriate documents prepared by them. The Owner shall require its consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflicts. The Architect shall have no responsibility for the components of the Project designed by Owner's consultants or for the adequacy of their drawings or other documentation. Review by the Architect of the work product of Owner's consultants is solely for consistency with the Architect's design concept of the Project. The Architect shall be entitled to rely on the technical sufficiency and timely delivery of documents and services furnished by those consultants in connection with such work product and shall not be required to review or verify calculations, designs or other documentation for compliance with applicable codes, laws, ordinances, rules and regulations nor shall Architect be responsible to discover errors or omissions in such documents or services. To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect and its consultants from and against all claims, liabilities, damages, losses and expenses, including attorney's fees, arising out of services performed by Owner's consultants, excluding if or when Owner contends the Architect or his consultants should have discovered clear and obvious errors or omissions in the services of Owner's consultants.

§ 5.17 If the Owner deviates from or authorizes deviations, recorded or unrecorded, from the Contract Documents without the written agreement of the Architect, the Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect and its consultants from and against all claims, liabilities, damages, losses and expenses, including attorney's fees, arising out of or resulting from such deviations.

§ 5.18 The Owner shall include in all contracts for construction Articles 3.5 and 3.18 of the AIA A-201 General Conditions of the Contract for Construction 2017 Edition.

§ 5.19 The Owner shall include in all contracts for construction, the requirement that the contractor(s) name the Owner and Architect as additional insureds on all liability insurance policies required of the contractors for the Project. Such insurance shall be required to be primary and non-contributory over any insurance carried by the Owner or Architect.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.1.1 Cost of the Work shall include an Owner's contingency in the amount of three (3%) percent of the Owner's budget for construction to cover ambiguities, inconsistencies, incompleteness, errors or omissions in the Instruments of Service as defined in Article 7 herein furnished by the Architect. The Architect shall not be liable for errors or omissions unless such errors or omissions both exceed the contingency and constitute a breach of the standard of care set forth herein.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of



the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect, and the Architect shall have no responsibility for such variance nor shall the Architect be responsible if the bids or Cost of the Work exceeds the estimate or Owner's budget.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3;. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using and maintaining, altering and adding to the Project or for informational purposes only in connection with any alteration or addition to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors,

Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, or the Architect is terminated without cause as provided in Section 9.5, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service or obtaining the Architect's written consent, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to defend, indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service, without consent of the Architect only, under this Section 7.3.1.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** The following provisions apply to any Instruments of Service provided in electronic format:

**§ 7.5.1** The official Instruments of Service are the signed and sealed Drawings and Specification issued in paper format for use in connection with the Project.

**§ 7.5.2** The Architect may, in its sole discretion, provide for use to Owner from time to time upon request by Owner for its convenience, the Architect's Building Information Model ("BIM") and/or CAD or other electronic files. The design documents, calculations, drawings, details, backgrounds and other information prepared by the Architect in electronic format, whether incorporated in the BIM Model or in CAD format (hereinafter collectively referred to as "Electronic Instruments of Service") are instruments of the professional architectural service intended for use only in connection with the construction of this Project. The Electronic Instruments of Service are and shall remain the property of the Architect.

**§ 7.5.3** The Electronic Instruments of Service are provided for the sole purpose of communicating the state of the design to date, and Owner acknowledges that such Electronic Instruments of Service may not be final or complete. Owner acknowledges that use by Owner or its contractors of the Electronic Instruments of Service is at the user's sole risk and responsibility. Under no circumstances shall such Electronic Instruments of Service be used on other projects, for additions to the project or completion of this Project by another design professional without the written consent of the Architect. Any such use or reuse by the Owner or others without the written consent of the Architect for the specific purpose intended shall be at the Owner's sole risk and without liability to the Architect. The Owner shall, to the fullest extent permitted by law, defend, indemnify and hold harmless the Architect and its consultants from all claims, liabilities, damages, losses and expenses, including attorney's fees, arising out of or resulting from Owner's use or reuse of the Electronic Instruments of Service or any use in violation of any terms of this Article. Any such consent or adaptation for use shall entitle the Architect to further compensation at rates to be mutually agreed upon by the Owner and Architect.

**§ 7.5.4** Because of the possibility that data stored on electronic media or delivered in machine readable format may be subject to alteration, deterioration, incompatibility, translation and readability issues, whether inadvertently or otherwise, the Owner agrees that the Architect shall not have responsibility or liability in connection with the completeness, accuracy or correctness of the Electronic Instruments of Service, information and data and use by the Owner is at its sole risk and responsibility. The Architect reserves the right to retain hard copy originals of all Project documentation delivered to the owner in machine readable form, which originals shall be referred to and shall govern in the event of any inconsistency between the hard copy originals and the electronic information. No software shall be transferred to the Owner. The Owner's right to use electronic files or to use the paper Instruments of Service prepared by the Architect is conditional upon the owner in full compliance with its obligations under this Agreement.

§ 7.5.5 The Owner acknowledges and understands that the use and automated conversion of information and data in the Electronic Instruments of Service provided by the Architect to a derivative work, model, or alternate system, format or version by the owner may not be accomplished without the introduction of inexactitudes, anomalies, or errors. In the event the Electronic Instruments of Service provided are so used or converted, the Owner agrees to assume all risks associated therewith and releases the Architect from such responsibility and to the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect and its consultants from and against all claims, liabilities, losses, damages and expenses, including, but not limited to attorney's fees, arising in connection therewith.

§ 7.5.6 The electronic data files are intended to work only as described in the Agreement. These files are compatible only on AutoCAD 2012 or Revit Architecture 2012 or later releases. The Owner shall verify drawing release number and file format with the Architect at the time the files are transmitted. The Architect makes no warranty as to the compatibility of the Electronic Instruments of Service.

§ 7.6 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this 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 Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein. The Owner shall name or require that its contractor(s) name the Architect as an additional insured under any Builders Risk or property insurance policy maintained on the Project.

§ 8.1.3 The Architect and Owner waive consequential damages, including, without limitation, lost profits, lost revenues, delay damages, loss of market, financing charges, interest and overhead for claims, disputes, or other matters in question, arising out of or relating to this Agreement or the services provided. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 Mediation**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by litigation. Prior to the initiation of mediation, on written notice of either party to the other of a n intent to mediate a dispute under this Agreement, each party shall designate a representative and shall meet within five (5) days after service of the notice of intent to mediate. The parties shall attempt to resolve the dispute through negotiation within ten (10) days of the meeting. Should the parties be unable to agree on a resolution with such ten (10) day period, the parties shall proceed to mediation as set forth herein.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association or such forum as the Owner and Architect may mutually agree in accordance with the administrative rules of the mediation service in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the

mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of litigation 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.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

[ X ] Litigation in a court of competent jurisdiction

The parties agree that the Circuit Court of Sangamon County, Illinois, is a court of competent jurisdiction, and the parties agree that any litigation regarding this Agreement or services performed under this Agreement shall be filed only in the Circuit Court of Sangamon County, Illinois.

#### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. The Owner shall promptly pay the Architect all sums due prior to suspension and any expenses incurred in the interruption of the Architect's services. Upon resumption of the Architect's services, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees: (Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

- .1 Termination Fee:  
To Be Determined
- .2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:  
To Be Determined

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7. In no event shall Architect be liable for any errors or omissions in the Instruments of Service if Owner is rightfully terminated under Sections 9.1, 9.3 or 9.4 or Architect is terminated under Section 9.5.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located.

§ 10.2 Terms in this Agreement, if not defined herein, shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including prompt payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives non-public information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of

compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

**§ 10.9** The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

## **ARTICLE 11 COMPENSATION**

**§ 11.1** For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows: To be determined on individual projects as assigned and incorporated in a Project Authorization exhibit to this Agreement.

- .1 Stipulated Sum *(Insert amount)*
- .2 Percentage Basis *(Insert percentage value)*  
( ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.
- .3 Other *(Describe the method of compensation)*  
  
Refer to Project Authorization(s).

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

The below shall be as modified per Project Authorization(s):

- .1 Program, Multiple Preliminary Design, Measured Drawings, Existing Facilities Surveys and Site Evaluation and Planning: service fees shall be billed hourly using hourly billing rates or on mutually agreed upon stipulated sum once the scope is finalized.
- .2 Civil Engineering: engineering services are under a separate contract with the Owner, or as stipulated in Project Authorization(s).
- .3 Landscape Design: service fees shall be based on mutually agreed upon stipulated sum once the scope is finalized.
- .4 Value Analysis, Detailed Cost Estimating and On-site Project Representation: service fees shall be billed hourly using hourly billing rates.
- .5 Conformed Construction Documents, As-Designed Record Drawings and As-Constructed Record Documents: service fees shall be billed hourly using hourly billing rates or based on mutually agreed upon stipulated sum.
- .6 Telecommunications/Data Design and Security Evaluation and Planning: service fees shall be billed hourly using hourly billing rates or based on mutually agreed upon stipulated sum or percentage of the Cost of the Work.
- .7 Facility Support Services and Coordination of Owner's Consultants (excluding Civil Engineer): will not be provided.
- .8 Commissioning, Extensive Environmentally Responsible and LEED® Certification: service fees shall be billed hourly using hourly billing rates or based on mutually agreed upon stipulated sum.
- .9 Fast-track Design Services: service fees shall be billed hourly using hourly billing rates or based on mutually agreed upon stipulated sum.

- .10 Furniture, Furnishings & Equipment Design: service fees shall be billed hourly using hourly billing rates or based on mutually agreed upon stipulated sum or percentage of the Cost of the Work.
- .11 Alternates: service fees for Alternates shall be either a percentage of the Cost of the Work, billed hourly using hourly billing rates and/or based on mutually agreed upon stipulated sum determined by the complexity of alternate.
- .12 Called Inspections: service fees for Called Inspections shall be billed hourly using hourly billing rates.
- .13 Planning and Zoning Assistance.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation.)*

To be determined on individual projects as assigned and incorporated in a Project Authorization exhibit to this Agreement.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect times one and one tenth (1.1): *(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)*

Refer to Project Authorization(s).

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows unless indicated otherwise in a Project Authorization:

Schematic Design Phase	fifteen	percent (	15	%)
Design Development Phase	seventeen	percent (	17	%)
Construction Documents Phase	forty	percent (	40	%)
Procurement Phase	three	percent (	3	%)
Construction Phase	twenty-five	percent (	25	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

Construction Administration may be computed on an hourly basis. See FGMA Hourly Rate Schedule, Exhibit B and refer to Project Authorization(s) as an exhibit to this Agreement.

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants are set forth below. The rates shall be adjusted periodically in accordance with the Architect’s and Architect’s consultants’ normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See FGMA Hourly Rate Schedule, attached as Exhibit B

Employee or Category	Rate (\$0.00)
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Init.

**§ 11.8 Compensation for Reimbursable Expenses**

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants times one and one-tenth (1.1) of the expenses incurred.

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)*

**§ 11.10 Payments to the Architect**

**§ 11.10.1 Initial Payments**

**§ 11.10.1.1** An initial payment of zero (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

**§ 11.10.2 Progress Payments**

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

In accordance with the Local Government Prompt Payment Act if applicable, or if not applicable, one percent per month.



§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows: *(Include other terms and conditions applicable to this Agreement.)*

§ 12.1 The Owner and Architect have reviewed the risks, rewards and benefits of the Project to each and the Architect's total compensation for services. The Owner agrees that, to the fullest extent permitted by law, the Architect's total liability to the Owner for any and all claims, damages, losses and expenses of any kind and nature, whether in tort, contract or otherwise, arising out of this Agreement or the services provided by the Architect shall not exceed the total amount of fees received by Architect.

§ 12.2 Any claims arising out of this Agreement shall be brought against the contracting parties and not against any individual director, officer or employee of a party.

§ 12.3 Any written notices provided for in this Agreement and copies of all correspondence shall be transmitted to the Owner and the Architect at the following addresses:

**Architect:**

FGM Architects Inc.  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269

**Owner:**

Village of Chatham  
116 East Mulberry Street  
Chatham, Illinois 62629

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

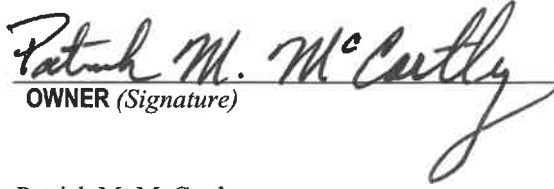
- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect
- .2 Exhibits: as incorporated into this

Agreement:

*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

Exhibit A – Project Authorization(s) to AIA Document B101-2017, Standard Form of Agreement between Owner and Architect, Date of this Agreement or thereafter  
Exhibit B – FGM Architects - Hourly Rate Schedule

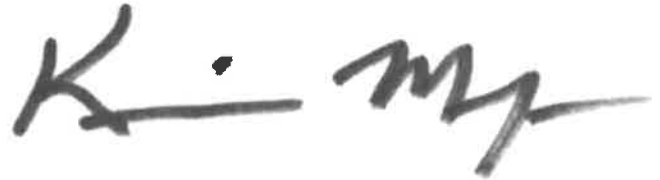
This Agreement entered into as of the day and year first written above.

  
OWNER (Signature)

Patrick M. McCarthy  
Village Manager  
(Printed name and title)

  
ARCHITECT (Signature)

Joshua N. Mandell, AIA, NCARB, LEED AP BD+C  
Principal / Subject Matter Expert  
(Printed name, title)



Kevin W. Meyer, AIA  
Principal / Managing Director  
(Printed name, title)

# FGMARCHITECTS

## Project Authorization No. 1 to AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect dated August 27, 2024

Between the Owner: **Village of Chatham, Illinois**  
116 East Mulberry Street  
Chatham, Illinois 62629

And the Architect: **FGM Architects Inc.**  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269

Project: **Program Verification and Master Planning In Support of:  
New Municipal Complex**

FGM Project Number: **24-xxxx (TBD)**

Date of Amendment: **August 27, 2024 Revised nA**

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This Document modifies and amends the AIA® Document B101™ - 2017, Standard Form of Agreement between Owner and Architect (dated as first indicated above) as follows below, and is for this particular Project / Phase only.

### ARTICLE 1 INITIAL INFORMATION

**1.1** This Agreement is based on the Initial Information set forth in this Article 1. The overarching objective or program of this Phase shall be for the Village of Chatham (Village) to engage FGM Architects (FGMA) and team to facilitate and perform a program verification and master planning study with respect to a proposed new municipal complex, including but not necessarily limited to construction of a new Village Hall and Police Department (Department). Note that this programming and preliminary design phase shall begin with no preconceived notions of space types, sizes, quantities or other requirements, and shall undertake to understand the Village's needs with no bias or expectations before information is provided by the Owner during discovery. Additional tasks of investigation (e.g. feasibility and analysis of sustainable energy source options, review and support of grant applications with specific, additional documents, geotechnical borings and assessment of same, land surveys, plat consolidations, and so forth) may be added to the below at the Owner's prerogative; this amendment would be revised as may be applicable.

#### **1.1.1 The Owner's program for the Project:**

The existing parcel(s) of ground which would be constructed upon with new Village municipal complex facilities (see 1.1.2 below) is hereby addressed as Village of Chatham – New Municipal Complex, 109 North Market Street, Chatham, Illinois 62629. This is approximately the eastern half of the block bounded on the east by North Market Street, and West Mulberry Street and West Chestnut Streets to the north and south respectively. Whereas, existing Veteran's Memorial Park is bounded by North Market Street to the west, West Mulberry Street and West Chestnut Streets to the north and south respectively, and North Main Street / IL-4 to the east.

To be clear, the new municipal complex in Chatham, Illinois, is intended to be constructed on the eastern extents of the block across North Market Street from Veteran's Memorial Park. Determination is yet to be made as to the full extent of the proposed municipal complex building site, in particular with respect to the western boundary and (potential) future acquisition of additional parcels, as some discussion between land owners and the Village has occurred and further land acquisition may yet be considered. As such, the parcel(s) between mid-block alley and North Church Street may yet be subject to a future phase of planning, if they were to become available to Village.

Initial project goals and targeted space needs for the new municipal complex were identified by Village in the solicitation dated 10 June 2024, and then reinforced during a shortlist interview for the project on 13 August 2024. Per Owner comments, the new facility shall be intended to accommodate Village's administrative, utility, police and dispatch functions as well as some manner of retail / commercial office space(s), all within a single footprint, shall provide for safe, modern and efficient law enforcement and utility management operations, and shall convey a civic presence while matching and enhancing the Chatham village green / central square in scale, style and through dialogue with the surrounding context.

The new facility is desired to feature consolidated Village administrative space(s), to provide convenient access and ample parking for citizens and visitors alike, create a new board chambers, provide ample working and meeting spaces for staff, include appropriate storage spaces, and allow for provision of services such as walk-up utility bill pay and create a secure, conditioned space for Village's SCADA system head-end. What's more, the project is intended to realize a police department with working and meeting spaces for all personnel while allowing for growth in the future, and secure public / private space delineation. Site study and plan / massing concept as presented to Village 13 August, as well as Owner's starting program of space needs from 10 June solicitation, shall serve as the basis of this proposal, and are hereby incorporated by reference.

Existing police department and village hall (including board chambers) are located east of North Main Street / IL-4 at 116 East Mulberry Street, and are not adjacent to the proposed new construction site. The existing facilities shall remain in service during programming and later during design and construction of the new municipal complex and requisite new site development. The Village may elect to sell existing / to be abandoned facilities once the project has been completed – more discussion between FGMA and Owner will be required to determine an anticipated value for this sale, and / or if / how to address those facilities in the study phase.

Meanwhile, Veteran's Memorial Park is assumed and understood to be subject to a scope of future improvements in accordance with the Village's comprehensive plan and parks and rec master plan.

Refer to preliminary schedule below.

**1.1.2 The Project’s physical characteristics:**

The Village of Chatham and Chatham Police Department is a governmental entity with responsibility for control, funding and management of all Village affairs and amenities, including utilities, law enforcement, parks and various structures and facilities throughout.

Within the existing Veteran’s Memorial Park, Village of Chatham operates and maintains a memorial, an open sided shelter, and a gazebo. Additional on-street vehicle parking is located at the full perimeter of the park.

Topography at the proposed new building is level, and the site appears that it would permit egress onto grade directly from all sides of a new municipal complex. Prior structures have been demolished at the proposed building site and the ground is (temporarily) loose paved with compacted crushed rock. Utilities are believed to be available, but have not yet been verified by FGMA. There is an alley running north to south through the middle of the block where Owner seeks to construct the new facilities, and it is understood to need to be maintained (or replaced) as a function of the plan for new construction.

**1.1.3 The Owner’s budget for the Cost of the Work, as defined in Article 6:**

Not applicable, as the intent of this phase of service will be to verify scope for design and to establish the Owner’s budget.

At the time of this proposal, the amount of Owner’s overall budget for the Total Project Cost, including construction, contingencies and soft costs but excluding land acquisition and other Owner-direct expenses is approximately TO BE DETERMINED. Likewise, the Cost of Construction Budget is anticipated to be approximately TO BE DETERMINED.

A preliminary understanding of potential budget range for the project of **\$8-10MM** was communicated by the Owner in the solicitation dated 10 June.

**1.1.4 The Owner’s anticipated design and construction milestone dates:**

Preliminary targeted dates for commencement of the Work are set forth below. The Owner acknowledges that this is a realistic time-line for the proposed program verification and master planning project, but that there may be some time lost due to forces outside of both Village’s and FGMA’s control. Subsequent to authorization from the Owner to proceed, the below schedule will be reviewed and confirmed; it is possible that the rearrangement of some tasks (e.g. Community Engagement) may be considered:

.1	Preliminary / Kick-Off Meeting.	September 2024
.2	Information Intake and Analysis – Program, Facility Assessment (limited), Plan and Site Test-Fitting. Includes Direct Contact Meetings with Stakeholders.	September 2024 thru October 2024
.3	Conceptual Space Plan and Site Diagrams, Cost Opinion, Schedule.	October 2024 thru November 2024
.4	Review DRAFT Deliverable with Owner.	November 2024

.5	Finalize Program, Plans / Diagrams, Schedule and Construction Cost Opinion.	November 2024 thru December 2024
.6	Present FINAL Deliverable to Owner	NLT January 2025

**1.1.5 The Owner intends the following procurement or delivery method for the Project:**

Not applicable to this phase of service.

For potential future scopes of construction work, the Owner and Architect will discuss options and advantages to various procurement strategies. It is noted that the new municipal complex project phase(s) may be procured with the support of a Construction Manager (CM). This has not been discussed with Owner group and shall be subject to confirmation by Village.

Regardless, it is anticipated that Village desires for there to be a design / bid / build process, meaning that project(s) would be fully designed and engineered / specified, followed by competitive bidding and selection of a constructor(s).

**1.1.6 The Owner's anticipated Sustainable Objective for the Project:**

This project will not necessarily be pursuing US Green Building Council (USGBC) LEED Certification, but this is subject to the Owner's direction to FGMA.

If so directed, the Design Team would be able to assist the Owner in evaluating and considering sustainable construction initiatives and would also be able to make recommendations to the Owner on the anticipated Return on Investment (ROI), first-cost and life-cycle costs of certain sustainable construction initiatives, as well as optional programs which track and certify sustainable construction (e.g. USGBC LEED). These may be added at the prerogative of the Owner as an additional service during latter phases of design and documentation, and do not necessarily have bearing during the heretofore proposed phase of service.

**1.1.7 Additional Owner identified Project representatives per Section 5.3:**

Mr. Vernon Foli, FBINA – Chief of Police  
Village of Chatham  
117 East Mulberry Street  
Chatham, Illinois 62629  
217.483.2453 direct / [vernfoli@chathamil.gov](mailto:vernfoli@chathamil.gov)

**1.1.8 Persons or Entities, in addition to the Owner's identified Project representatives, who may be required to review the Architect's submittals to the Owner per Section 5.3:**

Mr. Jim Michael, P.E. – Project Engineer  
Crawford, Murphy & Tilly  
2750 West Washington Street  
Springfield, Illinois 62704  
217.572.1055 direct / [jmichael@cmtengr.com](mailto:jmichael@cmtengr.com)

**1.1.9 If appropriate, the Owner will retain the following Consultants / Contractors at the Owner's expense:**

- .1 Land Survey and Title Commitments Search
- .2 *Reserved*
- .3 Geotechnical Engineer
- .4 Environmental Consultants
- .5 Natural Resource Consultants
- .6 Historical Archaeologists
- .7 Traffic Consultant
- .8 Third-Party Cost Estimator (if to be in addition to FGMA team proposed herewith)
- .9 Construction Testing Contractor
- .10 Building Code Plan Reviewer (if to be in addition to FGMA scope proposed herewith)
- .11 Building Code Site Inspector
- .12 Observer for Called Inspections

**1.1.10 Additional Architect identified Project representatives per Section 2.3:**

- .1 Paul Luzecky – Project Designer
- .2 Nick Beishir – Project Architect
- .3 Melanie Gary – Interior Designer

**1.1.11 If appropriate, the Architect shall retain the Consultants identified below at the Architect's expense:**

- .1 Consultants to be retained under Basic Services:
  - .1 Structural Engineer
  - .2 Mechanical Engineer
  - .3 Electrical Engineer
  - .4 Plumbing Engineer
  - .5 Fire Protection Engineer

Note that the scope of program verification and master planning services proposed herewith may not require these disciplines of design formally, but to the extent they are required for coordination, planning and budgeting they will be included at the Architect's expense.

- .2 Consultants to be retained and / or services to be performed by the Architect under Supplemental Services:
  - .1 Cost Estimating Support (Opinion of Probable Cost)
  - .2 Civil Engineering Consultation (excludes Land Survey at this time)
  - .3 Landscape Architecture Consultation
  - .4 Interior Design Consultation

**1.1.12 Other Initial Information on which the Agreement is based:**

Certain related documents are hereby incorporated by reference only and are not explicitly included herewith. Refer to Owner's solicitation for the project, Architect's

Statement of Qualifications dated 09 July 2024, and shortlist interview presentation by FGMA.

**ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES**

**4.1.1 Supplemental Services to be provided, if indicated below:**

- .1 Programming**
  - i. FGMA and team will facilitate meeting(s) with the Owner's building committee / designated project representatives to revisit and confirm site planning and space needs for the proposed facilities and new construction building project(s).
  - ii. FGMA and team will generate conceptual site and space plan diagrams to convey the planning objectives and program(s) of space needs in graphic form, and to demonstrate the recommended site development and space planning for the new municipal complex, based on the tabular program for building project(s) and the overarching goals of the Work. Subsequently, FGMA and team will generate a deliverable with options, recommendations, layouts, one (1) refined perspective image (see below) and other data, and present said deliverable to the Owner.
  - iii. FGMA and team will affect development of an Opinion of Probable Cost. This will include recommendations of grant opportunities and other financing sources and uses that Village may wish to evaluate and consider.
  - iv. FGMA and team will present the above to the building committee and Village Board, as well as possibly to the public at large (to be determined).
- .2 Multiple Preliminary Designs (with 4.1.1.1 above)**
- .4 Existing Facilities Surveys ( cursory review and verification of existing conditions for comparison with proposed new scopes of construction)**
- .5 Site evaluation and planning (with 4.1.1.1 above)**
- .6 Building Information Modeling (with 4.1.1.1 above)**
- .8 Civil engineering (with 4.1.1.1 above) – limited during this phase of service**
- .9 Landscape design (with 4.1.1.1 above) – limited during this phase of service**
- .10 Architectural interior design (with 4.1.1.1 above) – limited during this phase of service**
- .24 Sustainable Project Services**
  - i. FGMA and team will perform preliminary evaluation and investigation with regard to energy savings opportunities (e.g. solar photo voltaic panels or wind energy infrastructure) and related grants which may be available to support sustainable construction initiatives for the proposed scope of construction and development. We will thereafter make recommendations as to which systems / grants etc. would be value added for the Owner to consider, and advise on the feasibility of incorporating said initiatives in the planned construction phases.  
NOTE: If so directed to perform, more intensive sustainable project initiatives (such as a LEED Certification analysis) may be subject to additional cost.
- .31 Planning and Zoning assistance (with 4.1.1.1 above)**



If not listed and stipulated in 4.1.1, Supplemental Service shall not be included in the proposed phase of Work.

Extension of the Architect's services beyond six (6) months specifically in support of the programming verification and master planning effort shall be compensated as Additional Services.

**ARTICLE 11 COMPENSATION**

**11.1** For the Architect's Basic Services designated in Article 3, the Owner shall compensate the Architect and team as follows:

**11.1.3** For Program Verification and Master Planning services, compensation shall be **on an hourly basis not to exceed \$56,625.00 (fifty-six thousand six hundred twenty-five dollars and no cents).**

The above fee is subdivided as follows –

Opinion of Probable Cost (CORE Construction)	\$ 5,500.00
Civil Engineering (TBD)	\$ 7,000.00
Planning, Site Design and Landscape Arch. (TBD)	\$ 3,500.00
Additional Renderings (FGMA) <b>OPTIONAL*</b>	\$ 7,150.00*
+ <u>Architecture, Interior Design, Planning (FGMA)</u>	<u>\$ 33,475.00</u>
	<b>\$ 56,625.00</b>

Certain Supplemental Services may be in addition to the above compensation – see below for additional related information.

**11.2** For the Architect's Supplemental Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

**11.2.1** Programming: Included within 11.1.3

**11.2.2** Multiple Preliminary Designs: Included within 11.1.3

**11.2.4** Existing Facilities Surveys: Included within 11.1.3

**11.2.5** Site evaluation and planning: Included within 11.1.3

**11.2.6** Building Information Modeling: Included within 11.1.3

**11.2.8** Civil engineering: Included within 11.1.3

**11.2.9** Landscape design: Included within 11.1.3

**11.2.10** Architectural interior design: Included within 11.1.3

**11.2.24** Sustainable Project Services: Included within 11.1.3, except as noted below:

For more intensive Sustainable Project Services which exceed the description in 4.1.1.24.i, compensation shall be **on an hourly basis**. Once more definition can be assigned to these tasks, a limit can be proposed by FGMA at the Owner's request.

**11.2.31** Planning and Zoning assistance: Included within 11.1.3

**11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: a negotiated fee based on the additional services.

**Project Authorization No. 1 to AIA® Document B101™ - 2017**

**Date of Amendment: August 27, 2024 Revised nA**

**Page 8**

**11.4** Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect multiplied by one and one-tenth (X 1.1).

**11.7** The hourly billing rates for services of the Architect are set forth below. The rates shall be adjusted periodically in accordance with the Architect's and Architect's consultants' normal review practices. See attached Exhibit 'B' – FGMA Hourly Rate Schedule Dated February 1, 2024, adjusted annually.

**11.8.3** FGMA shall propose reimbursable expenses (as enumerated in 11.8.1) to be compensated by the Owner at a 1.1 multiplier and on an as-expended, as-invoiced basis, up to a limit of **\$1,650.00 (one thousand six hundred fifty dollars and no cents)**. This limit includes all members of the consultant team.


*We will not exceed this limit for reimbursable expenses without prior, written authorization from the Owner.*

**Owner**


Village of Chatham  
116 East Mulberry Street  
Chatham, Illinois 62629

**Architect**

FGM Architects Inc.  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269

By:   
Print Name: Patrick M. McCarthy  
Title: Village Manager

By:   
Joshua N. Mandell, AIA, NCARB, LEED AP BD+C  
Title: Principal / Subject Matter Expert

By:   
Kevin Meyer, AIA  
Title: Principal / Managing Director

## Exhibit B

### FGMA Hourly Rate Schedule

Where the fee arrangements are to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Current rates are as follows:

Effective February 1, 2024\*

Principal	\$ 300.00
Arch IV	260.00
Arch III	220.00
Arch II	180.00
Arch I	140.00
Interior Designer IV	240.00
Interior Designer III	200.00
Interior Designer II	160.00
Interior Designer I	120.00
Intern	75.00
Project Administrator	135.00

*\*Rates are subject to adjustment each November 1<sup>st</sup>.*



# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

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

**for the following PROJECT:**

*(Name and location or address)*

Village of Chatham  
New Municipal Complex  
109 North Market Street  
Chatham, Illinois 62629

FGMA Project No.: 24-xxxx

**THE OWNER:**

*(Name and address)*

Village of Chatham, Illinois  
116 East Mulberry Street  
Chatham, Illinois 62629  
Telephone Number: 217.697.5809

**THE ARCHITECT:**

*(Name and address)*

FGM Architects Inc.  
475 Regency Park, Suite 325  
O'Fallon, Illinois 62269  
Telephone Number: 618.624.3364  
Fax Number: 618.624.3369

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS

**ADDITIONS AND DELETIONS:**

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

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

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

Init.

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User Notes:

(946690383)

- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

Init.

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**User Notes:**

(946690383)

## INDEX

(Topics and numbers in bold are Section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,  
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, **15.4**

## ARCHITECT

**4**

### Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,  
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,  
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

### Basic Definitions

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

Building Permit

3.7.1

### Capitalization

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

## **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance  
9.10.2

## **Change Orders**

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

**Change Orders, Definition of**

**7.2.1**

## **CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

**Claims, Definition of**

**15.1.1**

Claims, Notice of  
1.6.2, 15.1.3

## **CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims  
15.4.1

**Claims for Additional Cost**

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

**Claims for Additional Time**

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

**Concealed or Unknown Conditions, Claims for**  
**3.7.4**

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

**Cleaning Up**

**3.15**, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

**Commencement of the Work, Definition of**  
**8.1.2**

**Communications**

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND**  
**9**

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**  
**7.3.1**

**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

**Contingent Assignment of Subcontracts**

**5.4**, 14.2.2.2

**Continuing Contract Performance**

**15.1.4**

**Contract, Definition of**

**1.1.2**

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3

**Contract Documents, Definition of**

**1.1.1**

**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

**Contract Sum, Definition of**  
**9.1**

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time, Definition of**  
8.1.1

**CONTRACTOR**  
**3**

Contractor, Definition of

**3.1**, **6.1.2**

**3**

Contractor, Definition of

**3.1**, **6.1.2**

**Contractor's Construction and Submittal Schedules**

**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3, 11.3, 14.1, 14.2.1.1

### **Contractor's Liability Insurance**

#### **11.1**

Contractor's Relationship with Separate Contractors  
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,  
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,  
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,  
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the  
Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

2.2.2, 9.7

Contractor's Right to Terminate the Contract

14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.3.6, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost, Definition of**

**7.3.4**

**Costs**

2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,  
12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**

**3.14, 6.2.5**

**Damage to Construction of Owner or Separate  
Contractors**

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

**Damage to the Work**

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

**Damages, Claims for**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7

**Damages for Delay**

6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work, Definition of**  
**8.1.2**

**Date of Substantial Completion, Definition of**  
**8.1.3**

**Day, Definition of**

**8.1.4**

**Decisions of the Architect**

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**

9.4.1, 9.5, 9.7, 14.1.1.3

**Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of**

2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1

**Definitions**

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,  
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**

**3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5**

**Digital Data Use and Transmission**

**1.7**

**Disputes**

6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**

**3.11**

**Drawings, Definition of**

**1.1.5**

**Drawings and Specifications, Use and Ownership of**  
**3.11**

**Effective Date of Insurance**

**8.2.2**

**Emergencies**

**10.4, 14.1.1.2, 15.1.5**

**Employees, Contractor's**

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1

**Equipment, Labor, or Materials**

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

**Execution and Progress of the Work**

1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4



Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

**1**

**Governing Law**

**13.1**

Guarantees (See Warranty)

**Hazardous Materials and Substances**  
10.2.4, **10.3**

Identification of Subcontractors and Suppliers  
5.2.1

**Indemnification**  
3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

**Information and Services Required of the Owner**  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

**Initial Decision**

**15.2**

**Initial Decision Maker, Definition of**  
1.1.8

Initial Decision Maker, Decisions  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority  
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**  
**10.2.8**, 10.4

Inspections  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders  
1.1.1

Instructions to the Contractor  
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service, Definition of**  
**1.1.7**

Insurance  
6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, **11**

Insurance, Notice of Cancellation or Expiration  
11.1.4, 11.2.3

**Insurance, Contractor's Liability**

**11.1**

Insurance, Effective Date of  
8.2.2, 14.4.2

**Insurance, Owner's Liability**

**11.2**

**Insurance, Property**  
**10.2.5**, 11.2, 11.4, 11.5

Insurance, Stored Materials  
9.3.2

**INSURANCE AND BONDS**

**11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1

Insured loss, Adjustment and Settlement of  
11.5

Intent of the Contract Documents  
1.2.1, 4.2.7, 4.2.12, 4.2.13

**Interest**

**13.5**

**Interpretation**  
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written  
4.2.11, 4.2.12

Judgment on Final Award  
15.4.2

**Labor and Materials, Equipment**  
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes  
8.3.1

Laws and Regulations  
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of  
12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability  
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

**Materials, Hazardous**  
10.2.4, **10.3**

Materials, Labor, Equipment and  
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction  
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien  
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

**Mediation**  
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1, 15.4.1.1

**Minor Changes in the Work**  
1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

#### Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### Mutual Responsibility

### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

#### Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

#### Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, 15.1.3, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

#### Notice of Testing and Inspections

13.4.1, 13.4.2

#### Observations, Contractor's

3.2, 3.7.4

#### Occupancy

2.3.1, 9.6.6, 9.8

#### Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

### 2

#### Owner, Definition of

##### 2.1.1

#### Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

#### Owner, Information and Services Required of the

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### Owner's Insurance

### 11.2

#### Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

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

2.5, 14.2.2

#### Owner's Right to Clean Up

### 6.3

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

### 6.1

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

### 2.4

#### Owner's Right to Suspend the Work

14.3

#### Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, 1.5, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### Partial Occupancy or Use

9.6.6, 9.9

#### Patching, Cutting and

3.14, 6.2.5

#### Patents

3.17

#### Payment, Applications for

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

#### Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

#### Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

#### Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## PAYMENTS AND COMPLETION

### 9

#### Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

#### PCB

10.3.1

#### Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

#### Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

## PERSONS AND PROPERTY, PROTECTION OF

### 10

#### Polychlorinated Biphenyl

10.3.1

#### Product Data, Definition of

3.12.2

#### Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

#### Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

#### Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project, Definition of**  
**1.1.4**  
Project Representatives  
4.2.10  
**Property Insurance**  
10.2.5, 11.2  
**Proposal Requirements**  
1.1.1  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4  
Rejection of Work  
4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.3.1, 9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3  
Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and Samples  
by Contractor  
3.12  
**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, 13.3, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
Rules and Notices for Arbitration  
15.4.1  
**Safety of Persons and Property**  
**10.2**, 10.4  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
**3.11**, 3.12, 4.2.7  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
**9.2**, 9.3.1  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Separate Contractors, Definition of**  
**6.1.1**  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7  
**Site, Use of**  
**3.13**, 6.1.1, 6.2.1  
Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  
Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.4  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
15.1.2, 15.4.1.1  
Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7  
**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3  
Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
**6.1.1**, 11.3  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,  
15.1.2  
**Substantial Completion, Definition of**  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
2.3.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor, Definition of**  
**5.1.2**

Subsurface Conditions  
3.7.4  
**Successors and Assigns**  
**13.2**  
**Superintendent**  
3.9, 10.2.6  
**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4  
**Suppliers**  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,  
9.10.5, 14.2.1  
**Surety**  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,  
15.2.7  
**Surety, Consent of**  
9.8.5, 9.10.2, 9.10.3  
**Surveys**  
1.1.7, 2.3.4  
**Suspension by the Owner for Convenience**  
**14.3**  
Suspension of the Work  
3.7.5, 5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14  
**Taxes**  
3.6, 3.8.2.1, 7.3.4.4  
**Termination by the Contractor**  
14.1, 15.1.7  
**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.7  
**Termination by the Owner for Convenience**  
14.4  
Termination of the Architect  
2.3.3  
Termination of the Contractor Employment  
14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

**14**

### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

### **TIME**

**8**

### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,  
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,  
15.1.3, 15.4

### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

### **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

**12**

### **Uncovering of Work**

**12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

### **Unit Prices**

7.3.3.2, 9.1.2

### **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

### **Use of Site**

3.13, 6.1.1, 6.2.1

### **Values, Schedule of**

9.2, 9.3.1

### **Waiver of Claims by the Architect**

13.3.2

### **Waiver of Claims by the Contractor**

9.10.5, 13.3.2, 15.1.7

### **Waiver of Claims by the Owner**

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

### **Waiver of Consequential Damages**

14.2.4, 15.1.7

### **Waiver of Liens**

9.3, 9.10.2, 9.10.4

### **Waivers of Subrogation**

6.1.1, 11.3

### **Warranty**

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,

15.1.2

### **Weather Delays**

8.3, 15.1.6.2

### **Work, Definition of**

**1.1.3**

### **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,

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, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, 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) 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.

#### **§ 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 Contractor**

The term "Contractor" as used herein means the General Contractor or the Construction Manager at risk retained by the Owner.

### **§ 1.1.10 Project Manual**

The Project Manual is a volume assembled for the Work that includes but is not limited to the Contract Documents and all Exhibits thereto.

### **§ 1.1.11 Provide**

When the work "provide", including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the specifications and related Contract Documents.

### **§ 1.1.12 Surety**

The surety is any firm or corporation that has executed as surety the Contractor's Performance Bond and Payment Bond guaranteeing the performance of the Contract.

## **§ 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. 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.

**§ 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.

**§ 1.2.2** 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. The use of the singular or plural, or the use of a male or female pronoun, is solely for the purpose of convenience and the Contract documents shall be read to include the male and female, and the plural where such meaning is appropriate.

**§ 1.2.4** In the event of discrepancies or conflicts among or between the contract Documents or observable conditions exist, the Contractor shall request an interpretation in writing from the Owner and Architect before proceeding with the Work. If the Contractor fails to request such an interpretation from the Architect, it is presumed that the more stringent, better quality or higher quantity requirement is included in the Work. The Contractor shall be responsible for the cost and installation of such requirement at no additional cost to Owner. Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect for interpretation before proceeding with the Work as a condition precedent to any claim for an increase in the Contract Sum or GMP.

## **§ 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.

## **§ 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.

**§ 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**

**§ 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.

**§ 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.

**§ 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.

**§ 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, or by law 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. The Contractor shall provide information or other assistance as the Owner may request in connection with obtaining permits.

**§ 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.

**§ 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.

**§ 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 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, 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 cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments 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.

## **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 local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 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 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.

**§ 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.

**§ 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 Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, 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.

### **§ 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 written 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 specified construction or installation procedure (including those recommended by any product manufacturer). The Contractor shall advise the Architect:

- .1 If the specified procedure deviates from good construction practice;
- .2 If following the procedure will affect any warranties; or
- .3 Of any objections which the Contractor may have to the procedure.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 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 or performed by persons other than the Contractor.

### **§ 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.

**§ 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 require employees for whom it is responsible working at the jobsite to participate in a mandatory drug testing program to the extent permitted in union agreements administered by the Contractor and required by the Owner. The costs for drug testing, reports and other related costs are the responsibility of the Contractor.

**§ 3.4.4** The Contractor shall only employ labor on the Project or in connection with the Work capable or working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall or shall not be included in the Work of any particular trade.

### **§ 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 otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with 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 in writing 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. 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.

**§ 3.5.2** 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. The Contractor's warranty shall be in effect for a period of one year beginning at the date of final completion. This warranty does not limit any other rights or remedies of the Owner or Architect.

### **§ 3.6 Taxes**

The Contractor shall pay 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.

### **§ 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 necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 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. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to 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 any penalties assessed and the costs 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 twenty one (21) days after first observance of the conditions. 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.

**§ 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 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.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, in writing, 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) that the Architect requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 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.

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

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. 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. The Owner's or Architect's silence to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those time 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, failure of the Owner or the Architect to object to the Contractor's schedule showing performance in advance of such time limits shall not create or imply any rights in favor of the Contractor for performance in advance of such time limits.

**§ 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.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

**§ 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 delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.11.1** Plans and sections of all concealed work, particularly concealed piping and conduit, and deviations from conditions shown on the Contract Drawings, shall be shown and dimensioned on the "Record Documents". Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Documents.

**§ 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**§ 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.

§ 3.12.10.2 If 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.

§ 3.12.11 After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of that specified in the Contract Documents will be considered only under one or more of the following conditions:

- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products, through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- .5 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.

§ 3.12.12 Substitution requests shall be written, timely and accomplished by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performances and test date, and any other data of information necessary for a complete evaluation 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 For Projects involving renovations or additions, the Contractor shall keep the building watertight at all times during the execution of the Work to the extent possible. The Contractor shall keep noise levels to a minimum, refrain from unreasonable interference with building personnel, maintain utilities in the building in proper working order at all times absent advance special coordination with Owner, and comply with special requirements of the Owner, if any.

#### § 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 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.

#### § 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.

§ 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.

#### § 3.17 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. 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 waives any right on contribution against and shall defend indemnify and hold harmless the Owner, Architect, Architect's consultants, and their directors, officers, members agents and employees (hereinafter "Indemnitees") 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, caused by or arising from the acts they may be liable, regardless of whether or not such claim, damage, loss, or expense 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 which would otherwise exist as to a party or person described in this Section 3.18.

§ 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. The purchase of insurance by the Contractor with respect to the obligations required in Article 3.18 shall in no event be construed as fulfillment or discharge of such obligations. The Contractor's indemnity obligation is in addition to, and cumulative of, any other obligations provided by law or contract, all of which are preserved to the Indemnitees without diminution.



§ 3.18.3 "Claims, damages, losses and expenses" as these words are used in this Contract shall be construed to include, but not be limited to (1) injury of 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 of any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs, et. Incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 Only to the extent prohibited by Illinois law the indemnification obligations of the Contractor under this Article 3.18 shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees, arising out of their own negligence.

§ 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 Owner and without recourse 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 of councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

## **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. The term "Architect" means the Architect or Architect's authorized representation.

§ 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, and Architect. Consent shall not be unreasonably withheld.

### **§ 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 as agreed with the Owner, 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 completed, will be in accordance with the Contract Documents. 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.



§ 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 for Work completed in accordance with the Contract Documents.

§ 4.2.6 The Architect has authority to recommend to the Owner that the Owner to reject Work that does not conform to the Contract Documents. Subject to Owner's written approval, 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, nor shall the Architect be responsible for defects or deficiencies of the Contractor, its Subcontractors, or suppliers resulting from their failure to complete the Work in accordance with the Contract Documents.

§ 4.2.7 The Architect will review, or take other appropriate action only upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples that are required by the Contract Documents, 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 specific details, 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. Regardless of the review, notations, or mark-ups of the Architect on any submittal, shop drawing or product data, neither the architect nor its consultants shall be responsible for any aspect of the submittal, shop drawing or product data which does not comply with the requirements of the Contract Documents, responsibility for which rests solely with the Contractor.

§ 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.

§ 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 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.

§ 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 reasonably inferable from the Contract Documents as being necessary to produce the intended results.

§ 4.2.14 When submitted in accordance with the Contract Documents, 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. Requests for information which do not conform to the requirements of the Contract Documents, or whose answer is reasonably obtainable or inferable from the Contract Documents, may be returned by the Architect without action.

## **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 soon as practicable after award of the Contract, 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 fourteen (14)-day period shall constitute notice of no reasonable objection.

§ 5.2.2 All subcontracts shall be in writing and shall be assignable by the Contractor to the Owner upon termination for cause pursuant to the terms of the Contract Documents. All subcontracts shall contain a provision that the subcontract is intended to directly benefit the Owner and the Owner is a third-party beneficiary of such subcontract. The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 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.

§ 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.

### **§ 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 All subcontracts shall be in writing, shall be assignable by the Contractor to the Owner and shall contain the following sentence, "The Owner is an intended third-party beneficiary of this subcontract."

#### § 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.

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

§ 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.

#### § 6.2 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 The Owner may, without invalidating the contract and without notice to the surety, direct changes in the Work. 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.

### § 7.2 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 any adjustment, in the Contract Sum; and
- .3 The extent of any adjustment, in the Contract Time

§ 7.2.2 No payment for Change in the Work shall be made until such Changes has been memorialized in an executed Change Order and the Change has been implemented into the Work. Partial payments on partially implemented changes shall be paid similarly as partial payment on base contract Work.

### § 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 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 of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 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.

§ 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 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, if any, with respect to that change.

§ 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.

#### § 7.4 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 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.

#### **§ 7.5 AGREED OVERHEAD AND PROFIT RATES**

**§ 7.5.1** For any adjustments to the Contract Sum based on other than the unit process method, the Contractor agrees to charge and accept payment for his overhead and profit at the following percentages of the cost attributable to the change in the Work:

1. 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;
2. Five percent (5%) for Work by the Contractor not involving Subcontractors;
3. Five percent (5%) for Work by Subcontractors;
4. 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;
5. For additional Work ordered as described above which will be executed by Subcontractors of the Contractor, it is agreed Subcontractors will be permitted to charge five percent (5%) for Work.
6. The cost to which overhead and profit stated herein is to be applied shall be determined in accordance with paragraph 7.3.4.
7. For suspension, delays or interruption by the Owner in accordance with Article 14.3, excluding profit, the overhead percentage shall not exceed one-half of the percentage set forth in paragraphs 7.5.2 through 7.5.5 above.

#### **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 or the Notice to Proceed authorizing the contractor to commence Work.

**§ 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.

##### **§ 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. Unless provided elsewhere in the contract Document, Final Completion shall be completed within thirty (30) days following Substantial Completion.

##### **§ 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 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.

§ 8.3.3 The Contractor shall not be entitled to an 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. In no event shall any delays or extensions of time be construed as cause of justification for payment of extra compensation to the Contractor. Any claims for an increase of the Contract Time shall be made in writing to the Architect within seven (7) days of the event causing the delay.

§ 8.3.4 Extension of Contract Time resulting from Changes in the Work shall be by Change Order. Whenever the Contractor seeks an adjustment in the Contract Time as part of a Claim or Change Order, the Contractor shall justify the request with proper reference to the approved construction schedules and submitted updated schedules. All executed Change Orders shall be deemed to include adjustments in the Contract Time, if any, resulting from the underlying Change in the Work.

§ 8.4 If the Contractor, but for a delay not within its control, would have completed the Work prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

§ 8.5 The stated milestone schedule dates for commencement of the Work, Substantial Completion of the Work and Final Completion of the Work, are material inducements to Owner in entering into this Agreement and all time limits stated in the Contract Documents are of the essence of this Agreement.

## 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

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. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. The Contractor shall prepare the schedule of values using actual bids or negotiated proposals for various components of the Work. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Approval of the schedule of values (and revisions thereto) by the Architect shall be an absolute prerequisite to certification of the 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 (10) days 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.

§ 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 paragraph will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the subcontract.

**§ 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. Stored materials may be included in the Applications for Payment provided the Architect can verify the cost and the existence of such stored materials. 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. Applications for Payment for stored materials must meet the following criteria: 1) evidence of insurance is required for the stored materials; 2) the materials must be produced or stored for this Project only; and 3) the materials must be stored separately from other inventory and identified for this Project only.

**§ 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. 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 law. Each payment request shall include properly executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of subcontractors and suppliers who were included in the immediate proceeding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers.

**§ 9.3.4** Contractor and Subcontractors shall pay all laborers, workmen, and mechanics employed by them not less than the prevailing wages applied to that locality, as provided in Section 13.1.4 - Illinois Department of Labor Requirements.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven(7) 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** At the election of the Owner, in addition to the Owner's remedy described in Subparagraph 9.5.1 above, a sufficient sum may be retained by the Owner as determined to be necessary for the purpose of setting aside a reasonable reserve to fully correct the loss or to protect the Owner from the loss for the items above set forth.

**§ 9.5.6** If, at any time, there should be evidence of any liens or claims for which, if established, the owner will become liable and which would be chargeable to the Contractor, the Owner shall have the right to retain, out of any payment due or thereafter to become due an amount sufficient to completely indemnify the Owner against such lien or claim. Should there prove to be any such lien or claim after all payments are made, the Contractor shall repay the Owner all sums which the Owner may be compelled to pay in discharging such lien or claim, including any legal fees or other costs resulting from the lien or claim.

**§ 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.

**§ 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. Notwithstanding Article 4.2.4, the Architect/Engineer and Subcontractor may communicate directly on the matters covered by this paragraph.

§ 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 (7) 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.

§ 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.

§ 9.6.9 The Owner will withhold ten percent (10%) from the periodic Progress Payments as retention. Payment of retention shall be requested with the Contractor's Application for Final Payment. No interest shall accrue on monies held in retention.

§ 9.7 Prompt Payment Payments shall be made in accordance with the State of Illinois Public Works Contract, Prompt Payment to the extent permitted under said statute. Under no circumstances shall interest accrue on amounts held in retention until such time as retainage is due under the Contract, and once due under the Contract, interest shall be as prescribed under herein referenced statutes

### § 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, designated instruction of the Owner's personnel in the operation of systems has been completed and documents, and all final finishes within the Contract Documents 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 (30) 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 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. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any tier.

§ 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 ("Punch 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.

§ 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 or as set forth in Article 12 for Punch List items and warranty work.

§ 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.

§ 9.8.6 Among other items identified elsewhere in the Contract Documents, submission of the following shall be a prerequisite to Substantial Completion:

- .1 All Record Documents
- .2 All Operations and Maintenance Manuals, if any
- .3 All manufacturers' warranties, if any
- .4 Complete commissioning of all systems required by the contract Documents to be commissioned.

§ 9.8.7 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.

### § 9.9 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 shown on the Contractor's Punch List and thereafter identified in the Architect's inspection shall be completed within thirty (30) days of issuance of the Certificate of Substantial Completion, unless a different time is stated elsewhere in the Contract Documents. 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, based upon the exercise of professional skill and care 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.

### **§ 9.10.4**

Acceptance of final payment by the Contractor, a Subcontractor or material 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.

**§ 9.10.5** 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.

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

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

The Contractor shall be solely 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 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, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 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 in writing.

§ 10.3.2 Upon receipt of the Contractor's written 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.

§ 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

§ 10.4.1 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 shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described 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.

§ 11.1.3 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.

## **§ 11.2 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**

**§ 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 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 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.

#### **§ 11.6 MISCELLANEOUS REQUIREMENTS**

**§ 11.6.1** All insurance coverage shall be provided by insurance companies having security ratings no lower than A-XII by A. M. Best as of the date of the Contract. In the event coverage in place as of the date of the contract is provided by insurers with ratings lower than A-XII, Contractor can request an exception. Such request shall include evidence that such coverage is written on an Admitted basis in the State of Illinois and, in the event of an insurer insolvency, the Illinois Guarantee Fund will be available to respond to claims made under such policies.

**§ 11.6.2** The required limits of liability may be met by using a Split-Limit or a Combined Single Limit basis. However, the total limit of liability shall not be less than that stated in the requirements.

#### **§ 11.7 LAWS AND REGULATIONS**

**§ 11.7.1** Proposer must comply with all laws of the United States of America, State of Illinois and all ordinances and regulations of all applicable municipal authorities in the performance of the Work under this Contract. The proposer must comply with all statutes pertaining to the selection and payment of labor, including the Prevailing Wage Rate Act (Illinois Division of Labor Standards) in affect at time of project issue.

During the performance of this Contract, the Contractor agrees as follows:

- .1 He will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national originator ancestry and, further, that he will examine all job classifications to determine whether minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.
- .2 If he hires additional employees in order to perform this Contract or any portion hereof, he will determine the availability of minorities and women in the area(s) from which he may reasonably recruit and he will hire for each job classification for which employees are hired in such a way that minorities and women are not under-utilized.
- .3 In all solicitations or advertisements for employees placed by him or on his behalf, he will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, national origin or ancestry.



**§ 11.8 ASSIGNMENT**

**§ 11.8.1** Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other nor shall the Contractor assign any monies due to or to become due to him hereunder, without the previous written consent of the Owner.

**§ 11.9 NO WAIVER OF LEGAL RIGHTS**

**§ 11.9.1** The Owner shall not be precluded nor stopped from any measurements, estimate or certificate made either before or after the completion and acceptance of the Work and payment therefore from showing the true amount and character of the Work performed, any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Construction Documents. The Owner shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate and payment in accordance therewith from recovering from the Contractor and his Sureties such damage as it may sustain by reason of his failure to comply with the terms of the Contract.

**§ 11.9.2** Neither the acceptance by the Owner nor any representative of the Owner, nor any payment for or acceptance of the whole or any part of the Work nor any extension of time, nor any possession taken by the Owner shall operate as a waiver of any portion of the Contract or of any power herein reserved, or any right to damage therein provided. A waiver of breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

**§ 11.10**

**§ 11.10.1** Whenever any Contractor is declared by the Owner to be in default under the Contract or fails to comply with the Contract, the Surety and the contractor are each responsible to make full payment to the Owner for any and all extra work incurred by the Architect/Engineer, Site Engineer or others as a result of the contractor's default and to pay to the Owner all costs and expenses resulting from the default and the curing and correction thereof plus all attorneys' fees, court costs and expenses incurred by the Owner as a result of the Contractor's default and also in the protection and prosecution of the Owner's rights under the Contract.

**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 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 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 correct it promptly after receipt of written 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-(1) year period for correction of Work shall commence to run with respect to portions of Work first performed or corrected after Substantial Completion at the time the subsequent acceptance of this Work in writing by the Owner.

§ 12.2.2.3 The one-(1) year period for correction of Work shall not be extended by corrective Work performed by the Contractor except as set forth in Article 12.2.2.2 herein.

§ 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.

§ 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 Federal Laws and the laws of State of Illinois, including but not limited to the following.

#### § 13.1.1 Human Rights Acts

In addition to the certifications, if any, required by the Owner and to the extent required by law, the Contractor shall comply with the terms and procedures of the Federal and State Human Rights Laws and Acts.

§ 13.1.2 **Drug Free Workplace** the Contractor by submitting its bid certifies that it will provide a drug free workplace and that it is in compliance with the requirements of the Federal and State Drug Free Workplace Acts.

#### § 13.1.3 Illinois Department of Labor Requirements

§ 13.1.3.1 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workmen, 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.

§ 13.1.3.2 **Illinois Prevailing Wage Law** the Contractor and Subcontractors shall comply with the Illinois Prevailing Wage Law and shall include in Bids the costs 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. Certified payrolls must be submitted to the Owner pursuant to Illinois law.

§ 13.1.3.3 To the extent that there are any violations of this Law and any demands are made upon the Owner 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 and Architect free and harmless from all costs, liability or damages incurred, directly or indirectly, by the Owner or Architect including attorneys' fees, 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, Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§ 13.1.3.4 No less than once per month, the Contractor shall submit certified payments to the Owner in compliance with the Illinois Prevailing Wage Law.

§ 13.1.3.5 **Debarment** Contractors who have been prosecuted and convicted of violating the Illinois Prevailing Wage Law are placed on a debarment list. Contractors on the debarment list are prohibited from contracting with any public body for the construction of any public works or from performing any work on any public construction project during the term of the debarment. The debarments are published in the Illinois Register by the Office of Secretary of State for the term of debarment. The Contractor by submitting its bid certifies that the Contractor is not barred from bidding on the Project as a result of a conviction for either bid-rigging, bid rotating or prevailing wage law.

§ 13.1.4 **Miscellaneous Provision of Law** It is specifically provided that this Contract is subject to all the provisions of law regulating and controlling the performance of Work for the Owner, and that the rules of law shall prevail over any provision contained in any of the Contract Documents which may be in conflict thereto or inconsistent therewith. Each and every provision of law and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though it were included herein, and if, through mistake or otherwise, such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

## § 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. Notwithstanding any of the provisions of this paragraph, however, the Owner may assign the Contract to an affiliated entity without the consent of the Contractor.

§ 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 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 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.

§ 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

Unpaid payments due shall bear interest in accordance with the State of Illinois Public Works Contract, accrue at the rate set forth in the provisions of the state statute governing payment to Contractors and Sub-Contractors on public projects. Under no circumstances shall interest accrue on amounts held in retention until such time as retainage is due under the Contract, and once due under the Contract, interest shall be as prescribed under herein referenced statutes.

#### § 13.6 Architects Additional Compensation

§ 13.6.1 The Contractor shall compensate the Architect for time expended by the Architect for contract administration time, at the Architect's hourly rate of the individual providing the service for the following:

- .1 After two (2) reviews of shop drawings/submittals per item.
- .2 Any office or field time spent after the second Punch list (excluding project closeout procedures).
- .3 Any office or field time spent should Project closeout extend more than thirty (30) days beyond Substantial Completion.
- .4 Any office or field time necessitated by the Contractor's failure to achieve the scheduled date of Substantial Completion.

§ 13.6.2 The funds paid to the Architect will be deducted by the Owner from the amounts due the Contractor for these additional services by change order and paid directly to the Architect.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of thirty (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 one hundred percent 100% of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty five (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 (7) days' written 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 earned to date on Work not executed, and direct costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of sixty (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 (7) additional days' written 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.

§ 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 (7) days' written 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 unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of 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 If suspension, delay or interruption by the Owner constitutes more than twenty percent (20%) of the total number of days scheduled for completion, 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 not 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.

§ 14.3.3 Any adjustment made in the Contract Sum pursuant to paragraph 14.3.2 shall be subject to the provisions of Article 7.3.6. Overhead shall be allowed to the extent of one-half the percentages set forth in Article 7.5.

#### § 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. Termination under this Article 14.1 shall be by written notice of termination delivered to the Contractor specifying the effective date of termination.

§ 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; direct costs incurred by reason of the termination, such as reasonable cancellation restocking charges associated with materials purchased for the Project. including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Adjustment of the Contract Sum shall not include profit, overhead shall be based on one half of the percentages given in paragraph 7.5.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

##### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties 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.

##### § 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 written 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 twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (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, written 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, written notice as provided in Section 15.1.3 shall be given. 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, compared with the normal average for the area. The criteria shall also 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 shall at all times 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. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

**§ 15.1.6.6** Additionally, the Contractor shall not be entitled to payment or compensation for any alleged damages, costs or expenses whatsoever, including but not limited to costs of acceleration, arising in any manner because of hindrance or delay, from any cause whatsoever, whether such hindrances or delay be reasonable, foreseeable, avoidable or unavoidable.

**§ 15.1.6.7** The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights which it or its Subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its Subcontractors or any other person, may suffer by reason of delay in the performance of the Work or any portion thereof for any reason, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.

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

The Contractor and Owner waive Claims against each other 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 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 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 (10) 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 (10) 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.

§ 15.2.5.1 When the Architect is acting as the Initial Decision Maker, interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents. In no event, shall the Architect be liable for results of interpretation or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effects shall be final if consistent with the intent expressed in the Contract Documents.

§ 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.

§ 15.2.6.1 Either party may, within thirty (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 thirty (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 litigation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation at a forum and with a mediator as mutually agreed by the parties. 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 litigation but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.3.3 Either party may, within thirty (30) days from the date that mediation has been concluded without resolution of the dispute or sixty (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 sixty (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.