



# AIA® Document A107™ – 2007

Signed by  
Parties  
New York  
Add Delta  
Sig

## Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope

AGREEMENT made as of the      day of October    in the year 2013  
(In words, indicate day, month and year.)

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

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
(630) 665-4710  
Fax: (630) 665-5880

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

Field Turf USA, Inc.  
8088 Montview Road  
Montreal, QC H4P 2L7  
(800) 724-2969  
Fax: (514) 340-9374

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

Delivery and installation of synthetic turf for Multipurpose Field 1, Upper Gym, of the Central Athletic Facility through the Cooperative Purchasing Network ("TCPN"). (TCPN #R5176).

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

Throughout this Agreement, the term "Architect" shall mean Owner.

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

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### ARTICLE 1 THE WORK OF THIS CONTRACT

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

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the date

*(Paragraphs deleted)*

established in a Notice to Proceed issued by the Owner; however, the Contractor shall not commence performance of the Work until it has provided to Owner required performance and labor and material bonds and evidence of required insurance as provided in the Contract Documents. Delay in the commencement of the Work due to the Contractor's failure to provide these documents in a timely manner shall not change the date of commencement for purposes of

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measurement of the Contract Time and shall not be the basis for an extension of the dates of Substantial Completion or Final Completion.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 The Contractor shall achieve Final Completion of the entire Work not later than  
(Paragraphs deleted)  
30 days after the Notice to Proceed is issued.

, subject to adjustments of this Contract Time authorized by Change Order, as provided in the Contract Documents. The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Final Completion is a reasonable amount of time considering the requirements of the Contract Documents.  
(Insert provisions, if any, for liquidated damages relating to failure to achieve Final Completion on time or for bonus payments for early completion of the Work.)

N/A

### ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:  
(Check the appropriate box.)

☒ [ X ] Stipulated Sum, in accordance with Section 3.2 below  
(Paragraph deleted)

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be Fifty-nine Thousand One Hundred Fifty-nine and 00/100 Dollars (\$59,159.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.2.2 Unit prices, if any:  
(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 3.2.3 Allowances included in the stipulated sum, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
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**§ 3.2.4 Adjustments to the Contract Sum:** Adjustments to the Contract Sum for changes in the Work other than changes in the Work involving items for which unit prices were requested by Owner and provided in Contractor's Submitted Proposal, shall be made as follows:

- I. In the manner agreed to by the Parties, or in the absence of agreement then the combined allowance for overhead and profit in connection with changes to the Work shall be the lesser of the amount, if any, included in the Contractor's bid proposal, or the following:
  - a. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or
  - b. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent (2%) of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.

When both additions and credits covering related Work 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.

**§ 3.2.4 Overtime,** if and when specifically authorized in advance in writing by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient work force so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

**§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE-N/A**

**§ 3.3.1** The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

**§ 3.3.2** The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*

**§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE N/A**

**§ 3.4.1** The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

**§ 3.4.2** The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*

**§ 3.4.3 GUARANTEED MAXIMUM PRICE -NA**

**§ 3.4.3.1** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$ ), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

**§ 3.4.3.2** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

§ 3.4.3.3 Unit Prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 3.4.3.4 Allowances included in the Guaranteed Maximum Price, if any:

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

Item	Allowance
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§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

§ 4.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents, submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by the Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

Upon substantial completion of the Work, Contractor may submit an Application for Payment for the work properly performed and approved by Owner. The remaining balance of the Contract Sum shall be paid upon Owner's final acceptance of the Final Work pursuant to Section 4.2 of this Agreement.

§ 4.1.3 Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, in form and substance as required by the Contract Documents is received by the Architect not later than the 10<sup>th</sup> day of a month, certified for payment by the Architect and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the fifteenth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than forty-five ( 45 ) days after the Architect receives the Application for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

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

§ 4.1.4 Retainage, if any, shall be withheld as follows: Ten Percent (10%) of the Contract Sum shall be retained until Final Completion.

§ 4.1.5 Payments due and unpaid under the Contract shall bear an interest rate of 1.5% per month (19.56% per annum).

*(Insert rate of interest agreed upon, if any.)*

## § 4.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 4.2.2 Subject to Section 4.2.1, the Owner's final payment to the Contractor shall be made no later than 45 days after the issuance of the Architect's final Certificate for Payment.

## ARTICLE 5 DISPUTE RESOLUTION THIS ARTICLE IS INTENTIONALLY DELETED

*(Paragraphs deleted)*

## ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope as modified for this Project by Owner.

§ 6.1.2 The Supplementary and other Conditions of the Contract: N/A

*(Table deleted)*

§ 6.1.3 The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

*(Table deleted)*

§ 6.1.4 The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

- a. **FieldTurf USA, Inc. Drawings and Information dated August 21, 2013 (4 pages total).**

*(Table deleted)*

§ 6.1.5 The Addenda, if any: N / A

*(Table deleted)*

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6.

§ 6.1.6 Additional documents, if any, forming part of the Contract Documents:

- .1 N/A.
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents forming a part of the Contract Documents:  
*(List here any additional documents that are intended to form part of the Contract Documents.)*
  - b. **Contractor's Compliance and Certification, a copy of which is attached to and incorporated in this Agreement as Exhibit B.**
  - c. **Insurance Requirements and certificate attached to and incorporated in this Agreement as Exhibit C.**
  - d. **Performance Bond and Labor Material Payment Bond, copies of which are attached to and incorporated in this Agreement as Exhibits D-1 and D-2.**

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- e. **Contractor's Proposal, dated August 19, 2013, attached to and incorporated in this Agreement as Exhibit E.** To the extent that Contractor's Proposal conflicts with this Agreement, this Agreement shall control.
- f. **FieldTurf USA, Inc. Drawings and Information dated August 21, 2013 (4 pages total).**

## **ARTICLE 7 GENERAL PROVISIONS**

### **§ 7.1 THE CONTRACT DOCUMENTS**

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions and Requirements of the of the Contract as included in the Project Manual), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor whether as specifically indicated or reasonably inferable from what is indicated in order to produce a first class work product. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

### **§ 7.2 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 between any persons or entities other than the Owner and the Contractor.

### **§ 7.3 THE WORK**

The term "Work" means the construction and services indicated 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.

### **§ 7.4 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.

### **§ 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

**§ 7.5.1** The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' or the Owner's reserved rights.

**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

**§ 7.5.3.** The Owner is the owner of the Contract Documents. The Contractor may retain one record set for use with this Project only. All copies of the Contract Documents except the Contractor's record set shall be returned or suitably accounted for to the Owner on request upon completion of the Work.

### **§ 7.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

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## ARTICLE 8 OWNER

### § 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 Subject to the Contractor's duties and obligations under the Contract Documents in general and 9.1.1 of this Agreement in particular, the Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner. The Contractor shall in all instances exercise proper precautions relating to the safe performance of the Work.

§ 8.1.3 Except for permits and fees that are stated to be the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### § 8.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, material or equipment so as to be able to complete the Work within the Contract Time, or fails to pay subcontractors or material suppliers timely or to remove and discharge within ten days any lien filed upon the Owner's property or funds by anyone claiming by, through or under the Contractor, or disregards the instructions of the Architect or Owner when based on the requirements of the Contract Documents, or otherwise fails to carry out the 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 is 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.

### § 8.3 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 or fails to perform a duty under or comply with a provision of the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under Section 8.2 thereof, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the actual cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

§ 8.4 The rights and remedies of Owner stated in this Article 8 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

## ARTICLE 9 CONTRACTOR

### § 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.1.1 By its execution of the Contract, the Contractor acknowledges, agrees, represents, and warrants that: (a) the Contractor has carefully and thoroughly examined the Contract Documents and the plans for the underlying site work, and the Contract Documents and plans for the underlying site work are full and complete, include all items necessary for the proper execution and completion of the Work, are sufficient to have enabled the Contractor to determine the cost of the Work and the time required for performance of the Work and to enable Contractor to construct the Work indicated in the Contract Documents in accordance with laws, ordinances, codes, regulations and rules applicable to the Work, and otherwise to fulfill all its obligations thereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial and Final Completion established in the Contract; (b) the omission from the Contract Documents or the plans for the underlying site work of minor details which ordinarily form a part of first class work and are necessary to the completion of the Work as indicated, shall not be cause for any extra cost but shall be included as if specifically mentioned or detailed; (c) the Contractor has visited and examined the Project site and surrounding areas, examined all physical, legal and other conditions affecting the Work and correlated its personal observations with the requirements of the Contract Documents and the underlying site work, and understands, is familiar with, and satisfied itself as to the same, including, without limitation: (i) the nature, location, and character of the Project and the site, including, without limitation surface conditions of the site and subsurface conditions observable or ascertainable upon the exercise of



reasonable diligence including all structures and obstructions thereon and thereunder, both natural and manmade and all surface and subsurface water conditions of the site and the surrounding area; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its generally prevailing climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; (iii) the availability, quality, quantity and cost of all labor, materials, supplies, tools, equipment and professional services necessary to complete the Work in the manner and within the cost and time frame indicated by the Contract Documents; and the adequacy of the plans for the underlying site work.

By its execution of the Contract, the Contractor acknowledges, agrees, represents and warrants that it has carefully examined the Drawings, Specifications and other Contract Documents pertaining to the underlying site work, and having visited the Project site it has no actual knowledge of any discrepancies, omissions, ambiguities, or conflicts in or between the underlying site work, and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it has an obligation to and will immediately notify Owner and Architect of such fact, and will not proceed until it shall have received the written interpretation of Owner or Architect. If any such differences or conflicts which were ascertainable by careful review of the documents were not called to the Owner's and Architect's attention prior to submission by the Contractor of its proposal, the Architect shall decide which of the conflicting requirements will govern based upon the most stringent or highest quality of the requirements and, subject to the approval of the Owner, the Contractor shall perform the Work at no additional cost and/or time to the Owner in accordance with the Architect's decision.

**§ 9.1.2** 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 8.1.1, 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. The Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor with considerable experience in the type of work being performed for this Project and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

**§ 9.1.3** 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 if imputation of such knowledge would be reasonable for a contractor with experience in the type of Work being performed for this Project, the Contractor shall carefully review and promptly report to the Architect any nonconformity discovered by or made known to the Contractor.

## **§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 9.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention under the full-time supervision of an approved site superintendent or foreman capable of communicating clearly with the Architect and Owner in the English language. 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, unless the Contract Documents give other specific instructions concerning these matters.

**§ 9.2.2** 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.

**§9.2.3** The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

### § 9.3 LABOR AND MATERIALS

§ 9.3.1 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.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees, Subcontractors and other persons carrying out the Work. The Contractor shall not employ or permit employment of, or contract with unfit persons or persons not skilled in tasks assigned to them.

*(Paragraphs deleted)*

§9.3.3 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its reasonable best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. The Contractor shall comply with all requirements of OSHA and shall indemnify and hold harmless the Owner against and from any claims, losses, damages or expenses it may incur as a result of the failure of the Contractor or any of its Subcontractors to comply with OSHA requirements.

§9.3.4 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, Owner's representative 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. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulations, the Architect or Owner's representative with the Owner's approval may require that other materials or equipment of equal kind and quality be provided at no additional cost to the Owner.

§ 9.3.5 The Contractor may make a substitution equivalent to or superior to the specified materials only with the consent of the Owner, after evaluation by the Architect and approval by the Owner and in accordance with a Modification.

§ 9.3.6 The Contractor shall carefully inspect all materials delivered on and to the Project site and reject defective materials without waiting for the Architect or Owner to observe the materials.

§9.3.7 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

§9.3.8 Before ordering any material or doing any Work, the Contractor shall verify all measurements at the Project Site and Contractor shall be responsible for the correctness of same. No extra charge or compensation will be allowed to the Contractor on account of any difference between actual dimensions and the measurements shown by the Project Drawings.

§9.3.9 If any person employed by the Contractor on the Work shall appear to the Owner to be incompetent or conduct himself in a disorderly or improper manner, such person or persons shall be removed from the Work immediately on the request of the Owner. Said removal shall not create any additional cost to Owner and shall not extend the time for completion of the Work.

**§9.4 Warranty** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or specifically state otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse of persons other than the Contractor or a Subcontractor, alterations to the Work not executed by the Contractor or a Subcontractor, improper or insufficient maintenance or improper operation. This warranty shall not be affected by the specification of any product or procedure unless the Contractor objects promptly to such product or procedure in writing including a supportable and verifiable basis as to why and how the warranty will be affected or cannot be provided for the specified product or procedure and advising the Architect and Owner 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. Inability, failure or refusal of the Subcontractor or supplier responsible for the defective materials, equipment or Work to correct the same shall not excuse the Contractor from performing under the warranty, If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials being furnished.

All warranties shall include labor and materials and shall be signed by the manufacturer or Subcontractor as the case may be and countersigned by the Contractor. All warranties shall be addressed to the Owner and delivered to the Owner upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in this Agreement or elsewhere in the Contract Documents, or in any Certificate of Substantial or Partial Completion approved by the Owner and Contractor and/or Subcontractor, as applicable, all warranties shall become effective on the date of Final Completion of the entire Work and shall run for a five (5) year period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern.

Defective materials, equipment or workmanship occurring within the Warranty period may be repaired where such produces results conforming to the Contract Documents relating to appearance, performance and reliability. Where the nature of the defective materials, equipment or workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment or workmanship complying with the Contract Documents.

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Because the Owner is an Illinois unit of local government, the Illinois sales tax is not applicable to materials, equipment and supplies incorporated in the Work or wholly consumed in the performance of the Work. The Owner will provide its sales tax exemption number for use by Contractor in purchasing such materials, equipment and supplies for this Project.

**§ 9.6.1** The Contractor shall consult with the Owner prior to the submission of any application to the appropriate permitting agency or authority in order to afford Owner the opportunity to obtain a waiver or reduction of any fees or costs associated therewith.

**§ 9.6.2** The Contractor shall comply with and give notices and permit inspections required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to or bearing on the performance of the Work or having jurisdiction over the Work. The Contractor shall promptly notify the Architect and Owner if any of the Contract Documents appear to be a variance therewith. If the Contractor performs Work knowing it to be contrary, or had it carried out its obligations under the Contract Documents generally, and Section 9.1.1 of this Agreement in particular, should reasonably have known 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 the costs attributable to correction.

## **§ 9.7 ALLOWANCES**

The Contractor shall include in the Contract Sum all allowances, if any, stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall also include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

## **§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 9.8.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project as approved by the Architect and Owner,, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 9.8.2** The Contractor shall perform the Work in strict accordance with the most recent schedule submitted to and approved by the Owner and Architect.

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## § 9.9 SUBMITTALS

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

*(Paragraph deleted)*

## § 9.10 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. The Contractor shall enforce the Owner's instructions regarding the conduct and use of the site by his employees.

### §9.10.2 Parking & Traffic.

.1 Parking of construction vehicles on the site by the Contractor shall not inhibit construction nor prevent access for emergency or other official vehicles. Parking of private vehicles on the site by the Contractor is prohibited unless said vehicle is necessary in the execution of the Contract. No construction vehicles shall be parked near or under any existing vegetation on the site.

.2 Construction traffic and staging shall be permitted only within construction limits as indicated on plan. The contractor is responsible for repair of any areas disturbed outside of this area, including grading and sodding. No staging will be permitted on existing asphalt without Owner's prior written consent. The cost to repair any damage to existing asphalt will be backcharged to the Contractor.

### §9.10.3 Intentionally omitted.

§9.10.4 **Water Removal.** If, during construction, standing water caused by heavy rains or poor drainage becomes a hazard in the proper execution of the Contract, it shall be the responsibility of the Contractor to provide and make payment for removal of said water to existing drainage swales, storm sewers or other natural or man-made drainage ways.

The Contractor shall keep the Project site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove, and properly and lawfully dispose of as applicable, waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall clean up and keep all streets, sidewalks and other public ways used for access to the Project site free from accumulation of spillage of fill or soils or other materials caused by operations under the Contract. The Contractor shall strictly comply with all laws and regulations pertaining to same be solely responsible for, and shall pay any fines or penalties assessed as the result of, any violation.

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

## § 9.11 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

## § 9.12 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or 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 material from and about the Project.

### § 9.13 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 9.14 ACCESS TO WORK

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

### § 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor waives any rights of contribution against, and shall indemnify and hold harmless, the Owner and the Architect and their officers, park commissioners, employees, directors, volunteers and agents from and against all claims, damages, losses and expenses of whatsoever nature, including but not limited to legal fees (attorneys' and paralegals' fees and court costs) and economic damage, but only to the extent arising out of, incidental to or resulting from the performance of the Work, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property other than the Work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 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 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 10 ARCHITECT

§ 10.1 The Architect and/or any other person designated in writing by the Owner will provide administration of the Contract 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, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 The Architect will visit the site and observe the Work at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.3 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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.

§ 10.4 Based on the Architect's observations and evaluations of the quality and progress of the Work and of the Contractor's Applications for Payment, the Architect will review and certify to the Owner the amounts due the Contractor and will, subject to approval by the Owner, issue Certificates for Payment in such amounts.

§ 10.5 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.7 The Architect will interpret and make recommendations to Owner on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor.

§ 10.8 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 ,

*(Paragraph deleted)*

§ 10.9 Nothing contained in this Agreement is intended to modify or shall modify the provisions of the Agreement between the Owner and Architect for this Project.

#### ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through and to the Architect the name, trade, and subcontract amount of each Subcontractor for each of the principal portions of the Work and the name of each person or entity proposed as a manufacturer or supplier of any principal product identified in the Specifications. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract and that the Owner shall have the right to enforce the Subcontractor's obligations thereunder after the occurrence of a default under the Contract by the contractor. 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which 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 these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their representatives proposed Sub-subcontractors.

§ 11.4 All subcontract agreements shall conform to the requirements of the Contract Documents and the Contractor hereby irrevocably assigns to the Owner and Owner's permitted assigns all its interest in any subcontract agreements

and purchase orders now existing or hereinafter entered into the contractor for performance of any part of the Work, which assignment will be effective in the event of the Contractor's failure to perform the Work in accordance with the Contract Documents and upon acceptance by the Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in said writing. It is agreed and understood that the Owner may accept said assignment at any time during the course of construction prior to Final Completion. The Contractor shall promptly submit to the Owner a true and complete copy of each subcontract upon execution of same. Each subcontract shall contain a contingent assignment of the subcontract to the Owner, consistent with this Subparagraph. Upon acceptance by the Owner of a subcontract; (1) the Contractor shall promptly furnish to the Owner true and complete copies of the designated subcontract agreements and purchase orders, both as may have been amended by approved change order together with copies of any and all such amendments, and (2) the Owner shall only be required to compensate the designated Subcontractor(s) or supplier(s) for compensation accruing to such party(ies) for Work done or materials delivered from and after the date on which the Owner accepts the subcontract agreement(s) or purchase order(s). All sums due and owing by the Contractor to the designated Subcontractor(s) or supplier(s) for work performed or material supplied prior to the Owner's acceptance of the subcontract agreement(s) or purchase order(s) shall constitute a debt between such parties and the Contractor. It is further agreed that no subcontract agreement or purchase order shall contain any restriction that would prohibit assignment under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract with the Contractor and may not be withdrawn prior to Final Completion.

## **ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

§ 12.2 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 activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted if and as appropriate accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and unless the additional cost was calculated using unit prices as provided elsewhere in this Agreement reasonable overhead and profit calculated in accordance with this Agreement, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment subject to the Owner's approval. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. Pending final determination of cost to the Owner or extension of time to the Contractor, unless otherwise directed by Owner, Contractor shall continue to perform the Work in accordance with the Contract Documents.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 13.4 If concealed or unknown physical conditions are encountered at the Project site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, and the Contractor could not have discovered same in the exercise of reasonable diligence as required under Subsection 9.1.1 of this Agreement, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

§ 13.5 Agreement on any Change Order shall constitute a final settlement, and accord and satisfaction between the Owner and Contractor, of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and Construction Schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 13.6 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents and applicable law. Accordingly, no course of conduct or dealing between the parties, nor any express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched shall be the basis of any claim to an increase in the Contract Sum or change in the Contract Time.

#### ARTICLE 14 TIME

§ 14.1 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.

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

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The respective dates of Substantial Completion and Final Completion are the dates certified by the Architect and approved by the Owner in accordance with Section 15

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines and the Owner agrees may justify delay, then as the Contractor's sole remedy the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. . Notwithstanding the foregoing, delays of the Contractor to carry out its obligations under or in accordance with the provisions of the Contract, shall not extend the Contract Time.

§ 14.6 The Contractor shall carry the Work forward regularly, diligently, uninterruptedly and expeditiously and in a good workmanlike and professional manner at such a rate of progress and with an adequate work force as will insure the completion of the Work in accordance with the Contract Documents by the date established in the Contract. It is expressly understood and agreed by and between Contractor and Owner that the time for completion of the Work is a reasonable time, taking into consideration the average climatic range, usual industrial conditions, and all other conditions and actors prevailing in this locality.



## ARTICLE 15 PAYMENTS AND COMPLETION

### § 15.1 APPLICATIONS FOR PAYMENT

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, at least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 15.1.3 Unless approved in advance by the Owner in writing payment shall be made only account of materials and equipment incorporated in the Work. If approved in advance by the Owner payment shall be made on account of materials and equipment delivered and suitably stored and protected from damage and loss 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 stored, and protected from damage, off the site at a location agreed upon in writing. The Owner may condition such approvals on such terms as the Owner in its discretion deems necessary for its protection

§ 15.1.4 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 be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.1.5 Failure to supply waivers of lien or acceptable evidence of payment of all current accounts incurred by this Contract work will be considered grounds for withholding final payment.

§ 15.1.6 All payment applications shall be accompanied by the Contractor's Partial Waiver of Lien for the full amount of the payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanics Lien Act (770 ILCS 60/0.01 *et seq.*) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and material suppliers; amounts paid and remaining to be paid to each; together with all documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

### § 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, and subject to Owner's approval either issue to the Owner for review and concurrence a Certificate for Payment for such amount as the Architect believes is properly due, and/or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, but not to the Contractor based on the Architect's observations and evaluations of the Work at the site and the data comprising the Application for Payment, that, the Work has progressed to the point indicated and that the quality and quantity of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation to the Owner but not to the Contractor that the Contractor is entitled to payment in the amount certified. 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 material 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.

§ 15.2.3 The Architect after consultation with the Owner may decide to certify payment and 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 15.2.2 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 15.2.1. The Architect may also decide not to certify 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 9.2.2, because of, but not limited to:

- .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 and such security is acceptable under applicable Illinois law to protect the lien rights of third parties;
- .3 failure of the Contractor to make payments properly to Subcontractors or 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 failure to carry out the Work in accordance with the Contract Documents.

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

§15.2.5 No interest will be paid on amounts withheld.

### § 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, 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 similar manner. This provision is not to be construed as a "conditional payment" or "pay when paid" clause. In the event that payment to the Contractor is delayed without fault of the Subcontractor, payment to the Subcontractor shall be made within a reasonable time after work is properly performed by a subcontractor irrespective of any delay in payment to the Contractor.

§ 15.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.3.3 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.

§15.3.4 Anything to the contrary contained or implied herein notwithstanding, no progress payment need be made by Owner until such time as Contractor, Subcontractors or any other persons performing the Work or furnishing materials or equipment for the Project furnishes such documents as Owner may reasonably require (including without limitation sworn notarized contractor's statement, affidavits and waivers of lien).

### § 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 "Substantial Completion" means the date that all of the Work has been completed to the point where it can be occupied and used for all purposes intended by Owner and has been accepted by Owner to receive all required occupancy permits.

"Punch List Items" mean and shall be limited to uncompleted items of Work (a) that do not interfere with the use and occupancy of any area of the Site for its intended purpose and (b) that, as a group, are capable of being completed by the Contractor within thirty (30) days of issuance of any Punch List. The "Punch List" is the list containing the Punch List Items.

§ 15.4.2 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 and to the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly and expeditiously to complete and correct all items on the list. 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.

§ 15.4.3 Upon receipt of the Contractor's list, the Architect and the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses an item, whether or not included in the Contractor's list, which is not in accordance with the Contract Documents and is necessary for Owner's occupancy or utilization of the Work, the Contractor shall before issuance of a Certificate of Substantial Completion, complete such items upon notification from the Architect and Owner. The cost of this and any additional inspections required to establish Substantial Completion due to the failure of the Contractor to properly complete all items of the Work necessary for the Owner's use or occupancy of the Work shall be charged to the Contractor. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion to the Owner for review and concurrence by the Owner which 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 punch 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 with the exception of the items of Work contained in the punch list accompanying the Certificate of Substantial Completion. With respect to Work enumerated on the punch list, the guarantee or warranty period shall commence upon final Completion.

§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

#### § 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor's written 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Architect has advised Owner of that finding and Owner has not advised Architect of any objection to such finding, the Architect will promptly issue a final Certificate for Payment to the Owner but not to the Contractor stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of 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 stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. . The Owner's failure to object to, and the Owner's acceptance of, the Architect's findings and/or certifications hereunder shall not constitute Owner's acceptance of Work not complying with the Contract Documents, or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

§ 15.5.2 Final payment shall not become due until the Contractor has fully performed the contract, including but not limited to delivery of all manufacturer's warranties, operating manuals, as-built drawings, and consent of the surety to final payment, pursuant to the Contract Documents, and has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including costs and reasonable attorneys' fees.

§ 15.5.3 The

(Paragraphs deleted)

final payment by Owner shall not relieve the Contractor of the responsibility for the correction of any and all defects in the work performed. Contractor shall correct all defects as notified for the applicable warranty period after final payment.

§ 15.5.4 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.

## ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

### § 16.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees and other persons performing any of 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 or the Contractor's Subcontractors or Sub-subcontractors; 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.

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 and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property 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 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect 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 9.15.

### § 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing. 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 in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

§ 16.2.2 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 16.2.1 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.

§ 16.2.3 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 indemnify the Contractor for all cost and expense thereby incurred.

## ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is Located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them, .. or by anyone for whose acts any of them may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (ii) by another person;
- .4 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .5 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- .6 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.15 above.

§ 17.1.2 The insurance required by Section 17.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 17.1.3 In furtherance and not in limitation of its obligations under this Section 17.1, Contractor shall maintain insurance in accordance with Exhibit C attached to and incorporated in this Agreement by this reference.

### § 17.2

§ 17.2.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 17.2.2 Property insurance shall be on a course of construction policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false work, windstorm, testing and start-up, temporary buildings and debris removal, including demolition, and shall cover reasonable compensation for the Architect's, any of the Owner's Consultant's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. Property insurance provided by the Owner shall not cover Contractor's, Subcontractor's or Sub-subcontractor's liability or any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring or other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make his own arrangements for any insurance he may require on such construction equipment.

§ 17.2.3 The Contractor shall effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 17.2.4 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of deductibles. If the Owner or insurer increases the

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required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

§ 17.2.5 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site and paid for by Owner after written approval of the Owner at the value established in the approval, and also portions of the Work in transit and paid for by Owner.

§ 17.2.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 17.2.7 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor Subcontractors and Sub-subcontractors in the Work, and the Owner and the Contractor shall be named insureds.

§ 17.2.8 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 17.2.9 Notwithstanding any provision contained in Section 11.3 including paragraphs 11.3.1 through and including 11.3.11, the Owner's obligation to purchase insurance shall herein be deemed satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor agrees that any obligation the Owner has to purchase property insurance shall be satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor further agrees that it will only have rights allowable to it under any coverage provided through the Owner's membership in a self-insured risk management agency or pool.

### § 17.3 PERFORMANCE BOND AND PAYMENT BOND

§ 17.3.1 At an additional cost to Owner, the Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

*(Paragraphs deleted)*

§ 17.4.2 If required by the Owner the Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond. The Performance Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for the faithful performance of the obligations of the Contract Documents, including the payment of prevailing wages in accordance with Article 24 of this Agreement, and the Labor and Material Payment Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for required payments to all persons performing labor and furnishing materials in connection with the Work. Such bonds shall be on AIA Document A-312 (2010 Edition), issued by the American Institute of Architects, shall be issued by a surety satisfactory to the Owner, and shall name the Owner as primary co-obligee. Such bonds shall be from an Illinois Admitted Bonding Company acceptable to the Owner and having a minimum policy holder rating of "B+" in the latest edition of Best's Insurance Guide in effect as of the date of the Contract. Bonds shall remain in full force and effect for at least one year following the date of Final Completion of the Work or for the entire duration of the longest warranty period provided for the Work, whichever is longer.

§17.4.3 The Contractor shall (i) furnish with all bonds a certified copy of the power of attorney from the Surety Company stating that the person executing said bond is duly authorized by the Surety Company to execute said bond; (ii) furnish a certified copy of the certificate from said Surety Company's state showing said Surety Company licensed and authorized to transact business and execute said bond in Illinois; and (iii) if requested by Owner, furnish a copy of current financial statements of said Surety Company.

§ 17.4.4 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 true and correct copy of the bonds or shall authorize a copy to be furnished.

## **ARTICLE 18 CORRECTION OF WORK**

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work. If prior to the date of Final Completion the Contractor, a Subcontractor, or anyone for who either of them is responsible, uses or damages any portion of the Work, including but not limited to mechanical, electrical, plumbing or other building system, machinery, equipment or other mechanical device, the Contractor shall cause such item to be replaced or if permitted by the Owner restored to "like new" condition, at no expense to the Owner.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, or by terms of an 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. The Owner shall give such notice promptly after discovery of the condition. During the applicable 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. . The obligation under this Section 18.2 shall survive acceptance of the Work under the Contract and termination of the Contract. Corrective Work shall be warranted to be free from defects for a period equal to one (1) year from the date of Final Completion of the Work. Contractor shall, within a reasonable time under the circumstances, after receipt of written notice thereof, correct, repair, replace and otherwise make good any defects or non-conformity in the Work.

§ 18.3 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

§ 18.5 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.

§ 18.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of the Work that is not in accordance with the requirements of the Contract Documents.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other, except that 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 such assignment.

### **§ 19.2 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4.

### **§ 19.3 TESTS AND INSPECTIONS**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate

time. 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. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of all tests, inspections or approvals unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs.

*(Paragraphs deleted)*

## **ARTICLE 20 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 20.1 TERMINATION BY THE CONTRACTOR**

If the Architect fails to certify payment and Architect has not notified the Contractor as provided in 15.2.1 of the reason for withholding certification or if the Owner fails to make payment as provided in this Agreement through no fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, and such failure continues for a period of 90 days after notice from the Contractor, the Contractor may, as its sole remedy, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work completed in accordance with the Contract Documents together with interest on the amount due until paid in accordance with the Illinois Local Government Prompt Payment Act. The Owner shall have the right to cure any failure prior to the termination date stated in any written notice from the Contractor in which event the Contractor shall continue with the Work. If the Contractor terminates the Work and receives payment in connection with his equipment, tools or materials such items shall be left and remain on the Site if the Owner so elects. Owner shall not be responsible for damages for loss of anticipated profits on Work not performed..

### **§ 20.2 TERMINATION BY THE OWNER FOR CAUSE**

#### **§ 20.2.1**

*(Paragraphs deleted)*

If the Contractor shall institute proceedings or consent to proceeding requesting relief or arrangement under the Federal Bankruptcy Act or any applicable Federal or State Law, or if a petition under any federal or state insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of the filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee, or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if the Contractor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if the Contractor fails to make prompt payment to Subcontractors for materials or labor

*(Paragraphs deleted)*

or otherwise breaches obligations under any subcontract with a Subcontractor; or if a lien or a notices of lien is filed against any part of the Project or Project funds or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the Project premises; or if the Contractor otherwise violates any material provision of the Contract Documents, then, without prejudice to any right or remedy available Owner may, after giving the Contractor seven (7) days' written notice, terminate the Contractor, and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and accept assignment of Subcontracts and may complete the Work by whatever reasonable method the Owner may deem expedient. If requested by the Owner, the Contractor shall remove any part or all of this equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in such event at the Contractor's expense. Upon request of the Contractor, the Owner shall furnish to the Contractor a reasonably detailed accounting of the costs incurred by the Owner in completing the Work.

**§ 20.2.2** When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

*(Paragraph deleted)*



§ 20.2.3. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and Owner's expenses the difference 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.2.4 The Owner's right to terminate the contract pursuant to Section 20.2 shall be in addition to and not in limitation of its right to stop the Work without terminating the Contract as provided elsewhere in this Agreement.

### § 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

*(Paragraph deleted)*

§20.3.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Section 20.3 shall be by a written notice of termination specifying the extent of termination and the effective date.

§20.3.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section 20.2 except as otherwise provided in this Paragraph:

1. cease operation as specified in the notice;
2. place no further orders and enter into no further Subcontracts for materials, labor, services, equipment, or facilities except as necessary to complete continued portions of the Contract;
3. terminate all subcontracts and orders to the extent they relate to the Work terminated;
4. proceed to complete the performance of Work not terminated; and
5. take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated work.

§20.3.3 Notwithstanding the foregoing, the Contractor shall not be required to proceed to complete the performance of Work not terminated, or to take action for the protection and preservation of the terminated Work, unless and until Contractor shall have received (i) payment from Owner of all amounts due Contractor under the Contract Documents for Work properly performed prior to the date of termination, or reasonable evidence of adequate and secure funds to pay same, as well as reasonable evidence of adequate and secure funds to pay for Contractor's reasonable, necessary and actual costs of disengagement from the terminated portion of the Work, and (ii) reasonable evidence of adequate and secure funds to pay for the cost of completing the Work not terminated and for protecting and preserving the terminated Work.

§20.3.4 Upon such termination the Contractor shall recover, as its sole remedy, payment for (a) Work performed in accordance with the Contract Documents in connection with the terminated portion of the Work prior to the effective date of termination; (b) items fabricated in accordance with the Contract Documents off the Project site, delivered and stored in accordance with the Owner's instructions; (c) actual costs incurred by Contractor for clearing its equipment off the site and to comply with Section 20.3.2.5 above; (d) all materials manufactured, delivered and/or procured by Subcontractor, which, upon said payment, title to said materials shall then be transferred to Owner; and (e) actual costs of terminating subcontracts, rental agreements, and orders, and all other actual costs of disengagement. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated overhead and profits.

§20.3.5 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, and (2) claims which the Owner has against the Contractor under the Contract.

§20.3.6 In the event of such termination during the Work, the sum payable to the Contractor for the Work shall be the amount of properly performed Work completed. Owner shall receive proper credit for sums already paid. Upon any such termination all obligations of Owner (other than payment of sums due Contractor for services properly performed but not previously paid prior to the date of termination) shall cease as of the effective date of termination.

### §20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

§20.4.1 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.

**§20.4.2** If suspension, delay or interruption ordered by the Owner constitutes in the aggregate more than twenty percent (20%) of the total number of days scheduled for completion, an adjustment shall be made for increases in the cost of the performance of this Contract, excluding profit caused by such suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 That the performance is, was, or would have been so suspended, delayed or interrupted by another cause, including without limitation the fault or negligence of the Contractor or any Subcontractor; or
- .2 That an equitable adjustment is made or denied under another provision of this Contract.

**§20.4.3** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

## **ARTICLE 21 CLAIMS AND DISPUTES**

### **§ 21.1 CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to 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 arising from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Owner's termination in accordance with Article 20.

In any suit or action arising under this Contract the Owner shall be entitled to an award of reasonable attorney's fees and costs of litigation.

## **ARTICLE 22 OTHER CONDITIONS OR PROVISIONS,**

**§ 22.1** The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities, and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

**§ 22.2** The Contractor shall limit material and equipment storage to the immediate area of Work and such other areas as Owner may designate. The Contractor shall promptly remove and properly dispose off site all construction material, trash, garbage and other debris.

**§ 22.3** The Contractor shall notify Architect and Owner in advance (to the extent practicable, notice shall be made at least 48 hours in advance) of any and all deliveries of major materials to the Project Site and shall give notice of receipt of materials and equipment that Architect or Owner has indicated or customarily would want to inspect prior to commencement of the Work. prior to resumption of the Work in the event of a temporary suspension lasting longer than 72 hours, and at such other time intervals during the process of the Work as requested by Owner, in order to permit Owner to properly coordinate its normal operations and facilities requirements with the Work.

**§ 22.4** The Contractor's payment applications shall be accompanied by the Contractor's Partial Waiver of Lien for the full amount of the payment and by the Partial Waivers or Final Waivers, as applicable, of Subcontractors, Sub-subcontractors and Suppliers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

- (i) All waivers (partial and final) shall include language as applicable indicating either that:

- a. all material was taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws or
- b. materials were provided by the following suppliers for whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

**§22.5** The following definitions are added to the Contract:

**"Final completion"** means the date the Contract has been fully performed, all the Work has been completed in accordance with the Contract Documents and the Owner has approved Final Payment to the Contractor.

**"Indicated"** and **"shown"** mean as described, detailed, discussed, scheduled, referenced, or called for in. or reasonably inferable from the Contract Documents in order to produce a first class Work product.

**"Provide"** or derivatives thereof means the Contractor shall properly fabricate, supply, furnish or procure all labor, materials, equipment, apparatus, and accessory appurtenances necessary to transport, deliver, install, erect and construct the specified item, complete, in place and ready for operation and use, including any final connections, in strict accordance with the Drawings, Specifications and other Contract Documents. The words "Contractor shall" are implied and shall be so understood whenever the direction or term "provide" is used.

**"Unit Price"** is an amount stated in the Contractor's bid proposal or in the Contract Documents as a price per unit of measurement for materials, equipment or services for a portion of the Work as described in the Bidding Documents or the Contract Documents. A Unit Price includes all costs associated with the performance of the portion of the Work for which the Unit Price is provided, including but not limited to labor, materials, equipment, loading, transportation, handling, unloading, overhead and profit.

#### **ARTICLE 23 • EQUAL EMPLOYMENT OPPORTUNITY**

**§23.1** The Contractor shall maintain and shall require its Subcontractors to maintain policies of employment as follows:

**§23.1.1** In the event of the Contractor's non-compliance with the provisions of this equal opportunity clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department").

Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the Contract may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this Contract, Contractor agrees as follows:

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or preference, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to a person's ability to perform the essential functions of the job, association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 2) That, if it hires additional employees in order to perform this Contract or any portions thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental handicap or disability unrelated to a person's ability to perform the essential function of the job, or association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest.

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- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and rules and regulations, the Contractor will promptly notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 5) That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
- 6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Owner and the Department for purposes of investigation to ascertain Department's rules and regulations.
- 7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Owner and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible (or contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations).

**§23.1.2** The Contractor is encouraged to utilize qualified minority businesses as subcontractors for supplies, services and construction.

#### **ARTICLE 24- COMPLIANCE WITH LAWS/PREVAILING RATES OF WAGES**

**§24.1** The Contractor shall comply with all federal, state, county and local laws, codes, rules and regulations applicable to the Work including without limitation all building codes, permit conditions, the American with Disabilities Act and the equal employment opportunity clause of the Illinois Human Rights Act and the rules and regulations of the Illinois Department of Human Rights, the Illinois Prevailing Wage Act, and all laws and regulations pertaining to occupational and work safety, hours of operation and disposal of construction debris. A copy of the Contractor's certification of compliance with applicable laws is attached to and made a part of this Agreement. A copy of the most current prevailing wages determination of the Illinois Department of Labor (IDOL) is attached to and made a part of this Agreement.

The Contractor shall comply with the requirements of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) and the Park District's Ordinances requiring payment of prevailing wages. The Contractor shall pay or cause to be paid not less than the prevailing rate of hourly wage in the county the work is performed as determined by the Illinois Department of Labor for the month in which the work is performed including but not limited to all laborers, workers and mechanics. All contractors and subcontractors rendering services under this contract must comply with all requirements under the Act, including but not limited to, all wage, notice and record keeping duties.

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor, regardless of the rates contained in the Contract Documents. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. Current prevailing wage rates are published at the following website: <http://www.state.il.us/agencv/idol/Rates/EVENMO/COUNTY.HTM>. The Contractor agrees to indemnify and hold harmless the Park District for any violations of the Prevailing Wage Act.

The Contractor shall also: (1) insert into each subcontract and the project specifications for each subcontract, a written stipulation that the subcontractor shall not pay less than the prevailing rate of hourly wage to all laborers, workers, and

Init.

mechanics performing work under the contract; and (2) require each subcontractor to insert into each lower-tiered contract and the project specifications for each lower-tiered subcontract. a stipulation that the subcontractor shall not pay less than prevailing rate of hourly wage to all laborers, workers, and mechanics performing work under the contract.

The Contractor shall include on all bonds and shall cause all subcontractors' bonds required under the Contract Documents to guarantee compliance with the Prevailing Wage Act.

Additionally, the Contractor and each subcontractor shall make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract, records of all laborers, mechanics, and other workers employed by them on the Project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day. The Contractor shall submit monthly, no later than the 10<sup>th</sup> day of each calendar month, in person, by mail, or electronically a certified payroll to the Park District with each monthly pay request in the form attached to the Contract Documents. The certified payroll shall be accompanied by a statement signed by the Contractor or subcontractor which states that: (i) he or she has examined the certified payroll and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. The Contractor may rely on the certification of a lower tier subcontractor, provided the Contractor does not knowingly rely upon a subcontractor's false certification. The records submitted in accordance with this payroll submittal provision shall be considered public records pursuant to Section 5 of the Prevailing Wage Act, 820 ILCS 130/5 (2004, as amended by P.A. 94-515). The Park District may, at its option, immediately terminate the Contract in the event that Contractor violates any provision of this paragraph or the Prevailing Wage Act.

Contractor shall also post the prevailing wage rates for each craft or type of worker or mechanic needed to complete the project at either: (1) a location on the project site easily accessible to the workers engaged on the project; or (2) in lieu of posting on the project site, if the Contractor has a business location where laborers, workers, and mechanics may regularly visit, the Contractor may either post the prevailing rate of wages in each county the Contractor works in a conspicuous location or provide the laborers, workers or mechanics engaged on the project a written notice indicating the prevailing rate of wages for the project.

Upon seven business days notice, the Contractor and each subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records identified in 820 ILCS 130/5(a)(1) to the Owner, and its officers and agents.

WHEATON PARK DISTRICT

FIELDTURF USA, INC.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

(Table deleted)(Paragraphs deleted)

Init.

## Additions and Deletions Report for AIA<sup>®</sup> Document A107<sup>™</sup> – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:58:45 on 10/10/2013.

### PAGE 1

AGREEMENT made as of the day of October in the year 2013

...

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
(630) 665-4710  
Fax: (630) 665-5880

...

Field Turf USA, Inc.  
8088 Montview Road  
Montreal, QC H4P 2L7  
(800) 724-2969  
Fax: (514) 340-9374

...

Delivery and installation of synthetic turf for Multipurpose Field 1, Upper Gym, of the Central Athletic Facility through the Cooperative Purchasing Network ("TCPN"). (TCPN #R5176).

...

Throughout this Agreement, the term "Architect" shall mean Owner.

### PAGE 2

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

...

§ 2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner:  
*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

established in a Notice to Proceed issued by the Owner; however, the Contractor shall not commence performance of the Work until it has provided to Owner required performance and labor and material bonds and evidence of required insurance as provided in the Contract Documents. Delay in the commencement of the Work due to the Contractor's

failure to provide these documents in a timely manner shall not change the date of commencement for purposes of measurement of the Contract Time and shall not be the basis for an extension of the dates of Substantial Completion or Final Completion.

PAGE 3

§ 2.3 The Contractor shall achieve Substantial-Final Completion of the entire Work not later than (—) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

30 days after the Notice to Proceed is issued.

...

Portion of Work

Substantial Completion Date

...

, subject to adjustments of this Contract Time authorized by Change Order, as provided in the Contract Documents. The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Final Completion is a reasonable amount of time considering the requirements of the Contract Documents. *(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial-Final Completion on time or for bonus payments for early completion of the Work.)*

N/A

...

- ☒ Stipulated Sum, in accordance with Section 3.2 below  
☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below  
☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

...

§ 3.2 The Stipulated Sum shall be (\$—), Fifty-nine Thousand One Hundred Fifty-nine and 00/100 Dollars (\$59,159.00), subject to additions and deductions as provided in the Contract Documents.

PAGE 4

§ 3.2.4 Adjustments to the Contract Sum: Adjustments to the Contract Sum for changes in the Work other than changes in the Work involving items for which unit prices were requested by Owner and provided in Contractor's Submitted Proposal, shall be made as follows:

- I. In the manner agreed to by the Parties, or in the absence of agreement then the combined allowance for overhead and profit in connection with changes to the Work shall be the lesser of the amount, if any, included in the Contractor's bid proposal, or the following:
  - a. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or
  - b. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent (2%) of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.



When both additions and credits covering related Work 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.

§ 3.2.4 Overtime, if and when specifically authorized in advance in writing by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient work force so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

**§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE COST OF THE WORK PLUS CONTRACTOR'S FEE-N/A**

...

**§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE N/A**

...

**§ 3.4.3 GUARANTEED MAXIMUM PRICE -N/A**

**PAGE 5**

§ 4.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents, submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by the Owner and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

~~§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: Upon substantial completion of the Work, Contractor may submit an Application for Payment for the work properly performed and approved by Owner. The remaining balance of the Contract Sum shall be paid upon Owner's final acceptance of the Final Work pursuant to Section 4.2 of this Agreement.~~

...

§ 4.1.3 Provided that an Application for ~~Payment~~ Payment, which is in proper form and accompanied by required supporting documents and submittals, in form and substance as required by the Contract Documents is received by the Architect not later than the 10<sup>th</sup> day of a month, certified for payment by the Architect and not subsequently nullified by the Architect in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the fifteenth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than forty-five ( 45 ) days after the Architect receives the Application ~~for Payment~~ for Payment in proper form and accompanied by required supporting documents and submittals and certifies payment to the Owner. Contractor is solely responsible for any delays in payment due in whole or in part to Contractor's failure to submit its payment application timely, in proper form and accompanied by all supporting documents and submittals required under the Contract.

...

§ 4.1.4 Retainage, if any, shall be withheld as follows: Ten Percent (10%) of the Contract Sum shall be retained until Final Completion.

...



§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located an interest rate of 1.5% per month (19.56% per annum).

...

—%

PAGE 6

§ 4.2.2 ~~The Subject to Section 4.2.1, the~~ Owner's final payment to the Contractor shall be made no later than ~~30~~45 days after the issuance of the Architect's final Certificate for ~~Payment, or as follows: Payment.~~

**ARTICLE 5 DISPUTE RESOLUTION THIS ARTICLE IS INTENTIONALLY DELETED**

**~~§ 5.1 BINDING DISPUTE RESOLUTION~~**

~~For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:~~

~~(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.)~~

☐ — Arbitration pursuant to Section 21.4 of this Agreement

☐ — Litigation in a court of competent jurisdiction

☐ — Other (Specify)

...

§ 6.1.1 The Agreement is this executed AIA Document A107–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited ~~Scope~~Scope as modified for this Project by Owner.

§ 6.1.2 The Supplementary and other Conditions of the Contract: N/A

Document	Title	Date	Pages
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...

Section	Title	Date	Pages
---------	-------	------	-------

...

a. FieldTurf USA, Inc. Drawings and Information dated August 21, 2013 (4 pages total).

Number	Title	Date
--------	-------	------

§ 6.1.5 The Addenda, if any: N / A

- ... 1 Exhibit A, Determination of the Cost of the Work, if applicable. N/A.
- ... 3 Other documents: documents forming a part of the Contract Documents:  
(List here any additional documents that are intended to form part of the Contract Documents.)
- b. Contractor's Compliance and Certification, a copy of which is attached to and incorporated in this Agreement as Exhibit B.
  - c. Insurance Requirements and certificate attached to and incorporated in this Agreement as Exhibit C.
  - d. Performance Bond and Labor Material Payment Bond, copies of which are attached to and incorporated in this Agreement as Exhibits D-1 and D-2.
  - e. Contractor's Proposal, dated August 19, 2013, attached to and incorporated in this Agreement as Exhibit E. To the extent that Contractor's Proposal conflicts with this Agreement, this Agreement shall control.
  - f. FieldTurf USA, Inc. Drawings and Information dated August 21, 2013 (4 pages total).

## PAGE 7

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), and Requirements of the of the Contract as included in the Project Manual), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. 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, or (3) a Construction Change Directive.~~ The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. Contractor whether as specifically indicated or reasonably inferable from what is indicated in order to produce a first class work product. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

... The term "Work" means the construction and services required indicated 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.

... **§ 7.5.1** ~~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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' or the Owner's reserved rights.~~

§ 7.5.3. The Owner is the owner of the Contract Documents. The Contractor may retain one record set for use with this Project only. All copies of the Contract Documents except the Contractor's record set shall be returned or suitably accounted for to the Owner on request upon completion of the Work.

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§ 8.1.2 The Contractor shall be entitled to Subject to the Contractor's duties and obligations under the Contract Documents in general and 9.1.1 of this Agreement in particular, the Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall Owner. The Contractor shall in all instances exercise proper precautions relating to the safe performance of the Work.

§ 8.1.3 Except for permits and fees that are stated to be the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, material or equipment so as to be able to complete the Work within the Contract Time, or fails to pay subcontractors or material suppliers timely or to remove and discharge within ten days any lien filed upon the Owner's property or funds by anyone claiming by, through or under the Contractor, or disregards the instructions of the Architect or Owner when based on the requirements of the Contract Documents, or otherwise fails to carry out the 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 is 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.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day or fails to perform a duty under or comply with a provision of the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under Section 8.2 thereof, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable actual cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

§ 8.4 The rights and remedies of Owner stated in this Article 8 shall be in addition to and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

...

§ 9.1.1 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. By its execution of the Contract, the Contractor acknowledges, agrees, represents, and warrants that: (a) the Contractor has carefully and thoroughly examined the Contract Documents and the plans for the underlying site work, and the Contract Documents and plans for the underlying site work are full and complete, include all items necessary for the proper execution and completion of the Work, are sufficient to have enabled the Contractor to determine the cost of the Work and the time required for performance of the Work and to enable Contractor to construct the Work indicated in the Contract Documents in accordance with laws, ordinances, codes, regulations and rules applicable to the Work, and otherwise to fulfill all its obligations thereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial and Final Completion established in the Contract; (b) the omission from the Contract Documents or the plans for the underlying site work of minor details which ordinarily form a part of first class work

and are necessary to the completion of the Work as indicated, shall not be cause for any extra cost but shall be included as if specifically mentioned or detailed; (c) the Contractor has visited and examined the Project site and surrounding areas, examined all physical, legal and other conditions affecting the Work and correlated its personal observations with the requirements of the Contract Documents and the underlying site work, and understands, is familiar with, and satisfied itself as to the same, including, without limitation: (i) the nature, location, and character of the Project and the site, including, without limitation surface conditions of the site and subsurface conditions observable or ascertainable upon the exercise of reasonable diligence including all structures and obstructions thereon and thereunder, both natural and manmade and all surface and subsurface water conditions of the site and the surrounding area; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its generally prevailing climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; (iii) the availability, quality, quantity and cost of all labor, materials, supplies, tools, equipment and professional services necessary to complete the Work in the manner and within the cost and time frame indicated by the Contract Documents; and the adequacy of the plans for the underlying site work.

By its execution of the Contract, the Contractor acknowledges, agrees, represents and warrants that it has carefully examined the Drawings, Specifications and other Contract Documents pertaining to the underlying site work, and having visited the Project site it has no actual knowledge of any discrepancies, omissions, ambiguities, or conflicts in or between the underlying site work, and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it has an obligation to and will immediately notify Owner and Architect of such fact, and will not proceed until it shall have received the written interpretation of Owner or Architect. If any such differences or conflicts which were ascertainable by careful review of the documents were not called to the Owner's and Architect's attention prior to submission by the Contractor of its proposal, the Architect shall decide which of the conflicting requirements will govern based upon the most stringent or highest quality of the requirements and, subject to the approval of the Owner, the Contractor shall perform the Work at no additional cost and/or time to the Owner in accordance with the Architect's decision.

§ 9.1.2 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 8.1.1, 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~~ 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. Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor with considerable experience in the type of work being performed for this Project and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 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 if imputation of such knowledge would be reasonable for a contractor with experience in the type of Work being performed for this Project, the Contractor shall carefully review and 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. Contractor.

## PAGE 9

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and ~~attention~~ attention under the full-time supervision of an approved site superintendent or foreman capable of communicating clearly with the Architect and Owner in the English language. 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, unless the Contract Documents give other specific instructions concerning these matters.

...

§9.2.3 The Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with

that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

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§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's ~~employees-employees~~, Subcontractors and other persons carrying out the Work. The Contractor shall not ~~permit employment of employ or~~ permit employment of, or contract with unfit persons or persons not skilled in tasks assigned to them.

~~§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.~~

#### **§ 9.4 WARRANTY**

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.~~

#### **§ 9.5 TAXES**

~~The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~

#### **§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS**

§9.3.3 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its reasonable best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. The Contractor shall comply with all requirements of OSHA and shall indemnify and hold harmless the Owner against and from any claims, losses, damages or expenses it may incur as a result of the failure of the Contractor or any of its Subcontractors to comply with OSHA requirements.

§9.3.4 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, Owner's representative 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. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulations, the Architect or Owner's representative with the Owner's approval may require that other materials or equipment of equal kind and quality be provided at no additional cost to the Owner.

§ 9.3.5 The Contractor may make a substitution equivalent to or superior to the specified materials only with the consent of the Owner, after evaluation by the Architect and approval by the Owner and in accordance with a Modification.

§ 9.3.6 The Contractor shall carefully inspect all materials delivered on and to the Project site and reject defective materials without waiting for the Architect or Owner to observe the materials.

§9.3.7 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

§9.3.8 Before ordering any material or doing any Work, the Contractor shall verify all measurements at the Project Site



and Contractor shall be responsible for the correctness of same. No extra charge or compensation will be allowed to the Contractor on account of any difference between actual dimensions and the measurements shown by the Project Drawings.

§9.3.9 If any person employed by the Contractor on the Work shall appear to the Owner to be incompetent or conduct himself in a disorderly or improper manner, such person or persons shall be removed from the Work immediately on the request of the Owner. Said removal shall not create any additional cost to Owner and shall not extend the time for completion of the Work.

§9.4 Warranty The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or specifically state otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse of persons other than the Contractor or a Subcontractor, alterations to the Work not executed by the Contractor or a Subcontractor, improper or insufficient maintenance or improper operation. This warranty shall not be affected by the specification of any product or procedure unless the Contractor objects promptly to such product or procedure in writing including a supportable and verifiable basis as to why and how the warranty will be affected or cannot be provided for the specified product or procedure and advising the Architect and Owner 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. Inability, failure or refusal of the Subcontractor or supplier responsible for the defective materials, equipment or Work to correct the same shall not excuse the Contractor from performing under the warranty. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials being furnished.

All warranties shall include labor and materials and shall be signed by the manufacturer or Subcontractor as the case may be and countersigned by the Contractor. All warranties shall be addressed to the Owner and delivered to the Owner upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in this Agreement or elsewhere in the Contract Documents, or in any Certificate of Substantial or Partial Completion approved by the Owner and Contractor and/or Subcontractor, as applicable, all warranties shall become effective on the date of Final Completion of the entire Work and shall run for a five (5) year period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern.

Defective materials, equipment or workmanship occurring within the Warranty period may be repaired where such produces results conforming to the Contract Documents relating to appearance, performance and reliability. Where the nature of the defective materials, equipment or workmanship is such that acceptable results cannot be obtained by repair, such defective items shall be removed and replaced with new materials, equipment or workmanship complying with the Contract Documents.

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Because the Owner is an Illinois unit of local government, the Illinois sales tax is not applicable to materials, equipment and supplies incorporated in the Work or wholly consumed in the performance of the Work. The Owner will provide its sales tax exemption number for use by Contractor in purchasing such materials, equipment and supplies for this Project.

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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. The Contractor shall consult with the Owner prior to the submission of any application to the appropriate permitting agency or authority in order to afford Owner the opportunity to obtain a waiver or reduction of any fees or costs associated therewith.

§ 9.6.2 The Contractor shall comply with and give notices and permit inspections required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to or bearing on the performance of the Work or having jurisdiction over the Work. The Contractor shall promptly notify the Architect and Owner if any of the Contract Documents appear to be a variance therewith. If the Contractor performs Work knowing

~~it to be contrary~~ it to be contrary, or had it carried out its obligations under the Contract Documents generally, and Section 9.1.1 of this Agreement in particular, should reasonably have known ~~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 the costs attributable to correction.

#### PAGE 11

The Contractor shall include in the Contract Sum all ~~allowances~~ allowances, if any, stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall ~~not also~~ include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

...

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information approval~~ a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and ~~Project~~, Project as approved by the Architect and Owner, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in ~~general strict~~ accordance with the most recent schedule submitted to and approved by the Owner and Architect.

#### PAGE 12

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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; thereto~~; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

~~§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.~~

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. The Contractor shall enforce the Owner's instructions regarding the conduct and use of the site by his employees.

#### §9.10.2 Parking & Traffic.

.1 Parking of construction vehicles on the site by the Contractor shall not inhibit construction nor prevent access for emergency or other official vehicles. Parking of private vehicles on the site by the Contractor is prohibited unless said vehicle is necessary in the execution of the Contract. No construction vehicles shall be parked near or under any existing vegetation on the site.

.2 Construction traffic and staging shall be permitted only within construction limits as indicated on plan. The contractor is responsible for repair of any areas disturbed outside of this area, including grading and sodding. No staging will be permitted on existing asphalt without Owner's prior written consent. The cost to repair any damage to existing asphalt will be backcharged to the Contractor.

#### §9.10.3 Intentionally omitted.

§9.10.4 Water Removal. If, during construction, standing water caused by heavy rains or poor drainage becomes a hazard in the proper execution of the Contract, it shall be the responsibility of the Contractor to provide and make payment for removal of said water to existing drainage swales, storm sewers or other natural or man-made drainage ways.

The Contractor shall keep the Project site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove, and properly and lawfully dispose of as applicable, waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall clean up and keep all streets, sidewalks and other public ways used for access to the Project site free from accumulation of spillage of fill or soils or other materials caused by operations under the Contract. The Contractor shall strictly comply with all laws and regulations pertaining to same be solely responsible for, and shall pay any fines or penalties assessed as the result of, any violation.

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

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§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from waives any rights of contribution against, and shall indemnify and hold harmless, the Owner and the Architect and their officers, park commissioners, employees, directors, volunteers and agents from and against all claims, damages, losses and expenses of whatsoever nature, including but not limited to legal fees (attorneys' and paralegals' fees and court costs) and economic damage, but only to the extent arising out of, incidental to or resulting from the performance of the Work, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a other than the Work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they any of them may be liable, regardless of whether or not such claim, damage, loss or expense it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations otherwise reduce any other right or obligation of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

...

§ 10.1 The Architect and /or any other person designated in writing by the Owner will provide administration of the Contract 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, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 The Architect will visit the site and observe the Work at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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§ 10.4 Based on the Architect's observations and evaluations of the quality and progress of the Work and of the Contractor's Applications for Payment, the Architect will review and certify to the Owner the amounts due the Contractor and will will, subject to approval by the Owner, issue Certificates for Payment in such amounts.

...



§ 10.7 The Architect will interpret and decide-make recommendations to Owner on matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

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

§ 10.9 Nothing contained in this Agreement is intended to modify or shall modify the provisions of the Agreement between the Owner and Architect for this Project.

§ 11.1 A Subcontractor is a person or entity who-that has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors or suppliers and to the Architect the name, trade, and subcontract amount of each Subcontractor for each of the principal portions of the Work, of the Work and the name of each person or entity proposed as a manufacturer or supplier of any principal product identified in the Specifications. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract and that the Owner shall have the right to enforce the Subcontractor's obligations thereunder after the occurrence of a default under the Contract by the contractor. 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 the 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, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor responsibilities which 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 these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written 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 which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their representatives proposed Sub-subcontractors.

§ 11.4 All subcontract agreements shall conform to the requirements of the Contract Documents and the Contractor hereby irrevocably assigns to the Owner and Owner's permitted assigns all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into the contractor for performance of any part of the Work,

which assignment will be effective in the event of the Contractor's failure to perform the Work in accordance with the Contract Documents and upon acceptance by the Owner in writing and only as to those subcontract agreements and purchase orders that Owner designates in said writing. It is agreed and understood that the Owner may accept said assignment at any time during the course of construction prior to Final Completion. The Contractor shall promptly submit to the Owner a true and complete copy of each subcontract upon execution of same. Each subcontract shall contain a contingent assignment of the subcontract to the Owner, consistent with this Subparagraph. Upon acceptance by the Owner of a subcontract; (1) the Contractor shall promptly furnish to the Owner true and complete copies of the designated subcontract agreements and purchase orders, both as may have been amended by approved change order together with copies of any and all such amendments, and (2) the Owner shall only be required to compensate the designated Subcontractor(s) or supplier(s) for compensation accruing to such party(ies) for Work done or materials delivered from and after the date on which the Owner accepts the subcontract agreement(s) or purchase order(s). All sums due and owing by the Contractor to the designated Subcontractor(s) or supplier(s) for work performed or material supplied prior to the Owner's acceptance of the subcontract agreement(s) or purchase order(s) shall constitute a debt between such parties and the Contractor. It is further agreed that no subcontract agreement or purchase order shall contain any restriction that would prohibit assignment under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract with the Contractor and may not be withdrawn prior to Final Completion.

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§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted if and as appropriate accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and ~~reasonable overhead and profit, unless the additional cost was calculated using unit prices as provided elsewhere in this Agreement~~ reasonable overhead and profit calculated in accordance with this Agreement, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for ~~Payment~~ Payment subject to the Owner's approval. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. Pending final determination of cost to the Owner or extension of time to the Contractor, unless otherwise directed by Owner, Contractor shall continue to perform the Work in accordance with the Contract Documents.

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§ 13.4 If concealed or unknown physical conditions are encountered at the Project site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, and the Contractor could not have discovered same in the exercise of reasonable diligence as required under Subsection 9.1.1 of this Agreement, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

§ 13.5 Agreement on any Change Order shall constitute a final settlement, and accord and satisfaction between the Owner and Contractor, of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and Construction Schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work were originally part of the Contract Documents.

§ 13.6 No change in the Work, whether by way of alteration or addition to the Work, shall be the bases of an addition to the Contract Sum or change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract

Documents and applicable law. Accordingly, no course of conduct or dealing between the parties, nor any express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched shall be the basis of any claim to an increase in the Contract Sum or change in the Contract Time.

...

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3, respective dates of Substantial Completion and Final Completion are the dates certified by the Architect and approved by the Owner in accordance with Section 15

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines and the Owner agrees may justify delay, then as the Contractor's sole remedy the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21, determine. . Notwithstanding the foregoing, delays of the Contractor to carry out its obligations under or in accordance with the provisions of the Contract, shall not extend the Contract Time.

§ 14.6 The Contractor shall carry the Work forward regularly, diligently, uninterruptedly and expeditiously and in a good workmanlike and professional manner at such a rate of progress and with an adequate work force as will insure the completion of the Work in accordance with the Contract Documents by the date established in the Contract. It is expressly understood and agreed by and between Contractor and Owner that the time for completion of the Work is a reasonable time, taking into consideration the average climatic range, usual industrial conditions, and all other conditions and actors prevailing in this locality.

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§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, at least ten days before the date established for each progress payment, the Contractor shall submit to the Architect, Architect and Owner, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment.

...

§ 15.1.3 Payments-Unless approved in advance by the Owner in writing payment shall be made only account of materials and equipment incorporated in the Work. If approved in advance by the Owner payment shall be made on account of materials and equipment delivered and suitably stored and protected from damage and loss 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 stored, and protected from damage, off the site at a location agreed upon in writing. The Owner may condition such approvals on such terms as the Owner in its discretion deems necessary for its protection

§ 15.1.4 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, shall be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.1.5 Failure to supply waivers of lien or acceptable evidence of payment of all current accounts incurred by this Contract work will be considered grounds for withholding final payment.

§ 15.1.6 All payment applications shall be accompanied by the Contractor's Partial Waiver of Lien for the full amount of the payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanics

Lien Act (770 ILCS 60/0.01 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and material suppliers; amounts paid and remaining to be paid to each; together with all documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

...

§ 15.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, ~~either issue to the Owner a Certificate for Payment, with a copy to the Contractor, and subject to Owner's approval either issue to the Owner for review and concurrence a Certificate for Payment~~ for such amount as the Architect determines is properly due, or believes is properly due, and/or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, but not to the Contractor based on the Architect's observations and evaluations of the Work at the site and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality and quantity of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation to the Owner but not to the Contractor that the Contractor is entitled to payment in the amount certified. 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 material 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.

§ 15.2.3 The Architect after consultation with the Owner may decide to certify payment and 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 15.2.2 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 15.2.1. ~~If the Contractor and the 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. The Architect may also decide not to certify 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 9.2.2, because of ~~of~~, but not limited to:

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- .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~~ Contractor and such security is acceptable under applicable Illinois law to protect the lien rights of third parties;

...

- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

...

§15.2.5 No interest will be paid on amounts withheld.

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, 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 similar manner. This provision is not to be construed as a "conditional payment" or "pay when paid" clause. In the event that payment to the Contractor is delayed without fault of the Subcontractor, payment to the Subcontractor shall be made within a reasonable time after work is properly performed by a subcontractor irrespective of any delay in payment to the Contractor.

...

§15.3.4 Anything to the contrary contained or implied herein notwithstanding, no progress payment need be made by Owner until such time as Contractor, Subcontractors or any other persons performing the Work or furnishing materials or equipment for the Project furnishes such documents as Owner may reasonably require (including without limitation sworn notarized contractor's statement, affidavits and waivers of lien).

§ 15.4.1 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. "Substantial Completion" means the date that all of the Work has been completed to the point where it can be occupied and used for all purposes intended by Owner and has been accepted by Owner to receive all required occupancy permits.

"Punch List Items" mean and shall be limited to uncompleted items of Work (a) that do not interfere with the use and occupancy of any area of the Site for its intended purpose and (b) that, as a group, are capable of being completed by the Contractor within thirty (30) days of issuance of any Punch List. The "Punch List" is the list containing the Punch List Items.

§ 15.4.2 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 and to the Owner a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly and expeditiously to complete and correct all items on the list. 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.

§ 15.4.3 Upon receipt of the Contractor's list, the Architect and the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses an item, whether or not included in the Contractor's list, which is not in accordance with the Contract Documents and is necessary for Owner's occupancy or utilization of the Work, the Contractor shall before issuance of a Certificate of Substantial Completion, complete such items upon notification from the Architect and Owner. The cost of this and any additional inspections required to establish Substantial Completion due to the failure of the Contractor to properly complete all items of the Work necessary for the Owner's use or occupancy of the Work shall be charged to the Contractor. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion to the Owner for review and concurrence by the Owner which 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 punch 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 with the exception of the items of Work contained in the punch list accompanying the Certificate of Substantial Completion. With respect to Work enumerated on the punch list, the guarantee or warranty period shall commence upon final Completion.

§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such 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.

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§ 15.5.1 Upon receipt of the Contractor's written 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Architect has advised Owner of that finding and Owner has not advised Architect of any objection to such finding, the Architect will promptly issue a final Certificate for Payment to the Owner but not to the Contractor stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of 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 stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Owner's failure to object to, and the Owner's acceptance of, the Architect's findings and/or certifications hereunder shall not constitute Owner's acceptance of Work not complying with the Contract Documents, or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

§ 15.5.2 Final payment shall not become due until the Contractor has fully performed the contract, including but not limited to delivery of all manufacturer's warranties, operating manuals, as-built drawings, and consent of the surety to final payment, pursuant to the Contract Documents, and has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including costs and reasonable attorneys' fees.

§ 15.5.3 ~~The making of final payment shall constitute a waiver of claims by the Owner except those arising from~~  
~~.1 — liens, claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents; or~~  
~~.3 — terms of special warranties required by the Contract Documents.~~ final payment by Owner shall not relieve the Contractor of the responsibility for the correction of any and all defects in the work performed. Contractor shall correct all defects as notified for the applicable warranty period after final payment.

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- .1 ~~employees on and other persons performing any of~~ the Work and other persons who may be affected thereby;

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§ 17.1 The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is ~~located, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property~~ Located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract, and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. them, .. or by anyone for whose acts any of them may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;  
.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the

- Contractor's employees;
- .3 claims for damages insured by usual personal injury liability coverage which are sustained (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (ii) by another person;
  - .4 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
  - .5 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
  - .6 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.15 above.

§ 17.1.2 The insurance required by Section 17.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 17.1.3 In furtherance and not in limitation of its obligations under this Section 17.1, Contractor shall maintain insurance in accordance with Exhibit C attached to and incorporated in this Agreement by this reference.

#### **§ 17.2 OWNER'S LIABILITY INSURANCE**

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

§ 17.2.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.3 to be covered, whichever is earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 17.2.2 Property insurance shall be on a course of construction policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false work, windstorm, testing and start-up, temporary buildings and debris removal, including demolition, and shall cover reasonable compensation for the Architect's, any of the Owner's Consultant's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. Property insurance provided by the Owner shall not cover Contractor's, Subcontractor's or Sub-subcontractor's liability or any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring or other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make his own arrangements for any insurance he may require on such construction equipment.

§ 17.2.3 The Contractor shall effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.

§ 17.2.4 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of deductibles. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles.

§ 17.2.5 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site and paid for by Owner after written approval of the Owner at the value established in the approval, and also portions of the Work in transit and paid for by Owner.



§ 17.2.6 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 17.2.7 The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor Subcontractors and Sub-subcontractors in the Work, and the Owner and the Contractor shall be named insureds.

§ 17.2.8 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 17.2.9 Notwithstanding any provision contained in Section 11.3 including paragraphs 11.3.1 through and including 11.3.11, the Owner's obligation to purchase insurance shall herein be deemed satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor agrees that any obligation the Owner has to purchase property insurance shall be satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor further agrees that it will only have rights allowable to it under any coverage provided through the Owner's membership in a self-insured risk management agency or pool.

### **§ 17.3 PROPERTY INSURANCE PERFORMANCE BOND AND PAYMENT BOND**

§ 17.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project. At an additional cost to Owner, the Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 17.3.3 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, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, 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 covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 17.3.4 A loss insured under the Owner's property insurance 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. The Contractor shall pay Subcontractors their just shares of insurance proceeds received

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

#### § 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 17.4.2 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. If required by the Owner the Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond. The Performance Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for the faithful performance of the obligations of the Contract Documents, including the payment of prevailing wages in accordance with Article 24 of this Agreement, and the Labor and Material Payment Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for required payments to all persons performing labor and furnishing materials in connection with the Work. Such bonds shall be on AIA Document A-312 (2010 Edition), issued by the American Institute of Architects, shall be issued by a surety satisfactory to the Owner, and shall name the Owner as primary co-obligee. Such bonds shall be from an Illinois Admitted Bonding Company acceptable to the Owner and having a minimum policy holder rating of "B+" in the latest edition of Best's Insurance Guide in effect as of the date of the Contract. Bonds shall remain in full force and effect for at least one year following the date of Final Completion of the Work or for the entire duration of the longest warranty period provided for the Work, whichever is longer.

§17.4.3 The Contractor shall (i) furnish with all bonds a certified copy of the power of attorney from the Surety Company stating that the person executing said bond is duly authorized by the Surety Company to execute said bond; (ii) furnish a certified copy of the certificate from said Surety Company's state showing said Surety Company licensed and authorized to transact business and execute said bond in Illinois; and (iii) if requested by Owner, furnish a copy of current financial statements of said Surety Company.

§ 17.4.4 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 true and correct copy of the bonds or shall authorize a copy to be furnished.

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§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work. If prior to the date of Final Completion the Contractor, a Subcontractor, or anyone for who either of them is responsible, uses or damages any portion of the Work, including but not limited to mechanical, electrical, plumbing or other building system, machinery, equipment or other mechanical device, the Contractor shall cause such item to be replaced or if permitted by the Owner restored to "like new" condition, at no expense to the Owner.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, or by terms of an 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. so. The Owner shall give such notice promptly after discovery of the condition. During the one-year-applicable 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. The obligation under this Section 18.2 shall survive acceptance of the Work under the Contract and termination of the Contract. Corrective Work shall be warranted to be free from defects for a period equal to one (1) year from the date of Final Completion of the Work.

Contractor shall, within a reasonable time under the circumstances, after receipt of written notice thereof, correct, repair, replace and otherwise make good any defects or non-conformity in the Work.

§ 18.3 If the Contractor fails to correct defective or nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18. 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.

§ 18.6 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of the Work that is not in accordance with the requirements of the Contract Documents.

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Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. 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 and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor. all tests, inspections or approvals unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs.

#### **§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

#### **ARTICLE 20 — TERMINATION OF THE CONTRACT**

##### **ARTICLE 20 TERMINATION OR SUSPENSION OF THE CONTRACT**

If the Architect fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, and Architect has not notified the Contractor as provided in 15.2.1 of the reason for withholding certification or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, this Agreement through no fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, and such failure continues for a period of 90 days after notice from the Contractor, the Contractor may, as its sole remedy, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. Work completed in accordance with the Contract Documents together with interest on the amount due until paid in accordance with the Illinois Local Government Prompt Payment Act. The Owner shall have the right to cure any failure prior to the termination date stated in any written notice from the Contractor in which event the Contractor shall continue with the Work. If the Contractor terminates the Work and receives payment in connection with his equipment, tools or materials such items shall be left and remain on the Site if the Owner so elects. Owner shall not be responsible for damages for loss of anticipated profits on Work not performed..

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§ 20.2.1 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 If the Contractor shall institute proceedings or consent to proceeding requesting relief or arrangement under the Federal Bankruptcy Act or any applicable Federal or State Law, or if a petition under any federal or state insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of the filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee, or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if the Contractor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if the Contractor fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- ~~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, or otherwise breaches obligations under any subcontract with a Subcontractor; or if a lien or a notices of lien is filed against any part of the Project or Project funds or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the Project premises; or if the Contractor otherwise violates any material provision of the Contract Documents, then, without prejudice to any right or remedy available Owner may, after giving the Contractor seven (7) days' written notice, terminate the Contractor, and take possession of the Project and all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and accept assignment of Subcontracts and may complete the Work by whatever reasonable method the Owner may deem expedient. If requested by the Owner, the Contractor shall remove any part or all of this equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in such event at the Contractor's expense. Upon request f the Contractor, the Owner shall furnish to the Contractor a reasonably detailed accounting of the costs incurred by the Owner in completing the Work.

§ 20.2.2 When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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. the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.3. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and Owner's expenses the difference 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.2.4 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract. The Owner's right to terminate the contract pursuant to Section 20.2 shall be in addition to and not in limitation of its right to stop the Work without terminating the Contract as provided elsewhere in this Agreement..



The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

§20.3.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause. Termination by the Owner under this Section 20.3 shall be by a written notice of termination specifying the extent of termination and the effective date.

§20.3.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section 20.2 except as otherwise provided in this Paragraph:

1. cease operation as specified in the notice;
2. place no further orders and enter into no further Subcontracts for materials, labor, services, equipment, or facilities except as necessary to complete continued portions of the Contract;
3. terminate all subcontracts and orders to the extent they relate to the Work terminated;
4. proceed to complete the performance of Work not terminated; and
5. take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated work.

§20.3.3 Notwithstanding the foregoing, the Contractor shall not be required to proceed to complete the performance of Work not terminated, or to take action for the protection and preservation of the terminated Work, unless and until Contractor shall have received (i) payment from Owner of all amounts due Contractor under the Contract Documents for Work properly performed prior to the date of termination, or reasonable evidence of adequate and secure funds to pay same, as well as reasonable evidence of adequate and secure funds to pay for Contractor's reasonable, necessary and actual costs of disengagement from the terminated portion of the Work, and (ii) reasonable evidence of adequate and secure funds to pay for the cost of completing the Work not terminated and for protecting and preserving the terminated Work.

§20.3.4 Upon such termination the Contractor shall recover, as its sole remedy, payment for (a) Work performed in accordance with the Contract Documents in connection with the terminated portion of the Work prior to the effective date of termination; (b) items fabricated in accordance with the Contract Documents off the Project site, delivered and stored in accordance with the Owner's instructions; (c) actual costs incurred by Contractor for clearing its equipment off the site and to comply with Section 20.3.2.5 above; (d) all materials manufactured, delivered and/or procured by Subcontractor, which, upon said payment, title to said materials shall then be transferred to Owner; and (e) actual costs of terminating subcontracts, rental agreements, and orders, and all other actual costs of disengagement. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated overhead and profits.

§20.3.5 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, and (2) claims which the Owner has against the Contractor under the Contract.

§20.3.6 In the event of such termination during the Work, the sum payable to the Contractor for the Work shall be the amount of properly performed Work completed. Owner shall receive proper credit for sums already paid. Upon any such termination all obligations of Owner (other than payment of sums due Contractor for services properly performed but not previously paid prior to the date of termination) shall cease as of the effective date of termination.

#### **§20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE**

§20.4.1 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.

§20.4.2 If suspension, delay or interruption ordered by the Owner constitutes in the aggregate more than twenty percent (20%) of the total number of days scheduled for completion, an adjustment shall be made for increases in the cost of the performance of this Contract, excluding profit caused by such suspension, delay or interruption. No adjustment shall be made to the extent:

- .1 That the performance is, was, or would have been so suspended, delayed or interrupted by another cause, including without limitation the fault or negligence of the Contractor or any Subcontractor; or
- .2 That an equitable adjustment is made or denied under another provision of this Contract.

§20.4.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

**§ 21.1 Claims, disputes and other matters in question-CLAIMS FOR CONSEQUENTIAL DAMAGES**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution. Contract. This waiver includes, but is not limited to 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 arising from the Work.

This waiver is applicable, without limitation, to all consequential damages due to Owner's termination in accordance with Article 20.

In any suit or action arising under this Contract the Owner shall be entitled to an award of reasonable attorney's fees and costs of litigation.

**ARTICLE 22 OTHER CONDITIONS OR PROVISIONS.**

§ 22.1 The Contractor shall be responsible for the supply and maintenance of any and all temporary equipment, utilities, and facilities necessary to properly and safely complete and protect the Work, including without limitation those required by winter conditions. Contractor shall provide and erect barricades and other safeguards adequate to warn of danger at the site and to protect persons and property from injury resulting from the Work.

§ 22.2 The Contractor shall limit material and equipment storage to the immediate area of Work and such other areas as Owner may designate. The Contractor shall promptly remove and properly dispose off site all construction material, trash, garbage and other debris.

§ 22.3 The Contractor shall notify Architect and Owner in advance (to the extent practicable, notice shall be made at least 48 hours in advance) of any and all deliveries of major materials to the Project Site and shall give notice of receipt of materials and equipment that Architect or Owner has indicated or customarily would want to inspect prior to commencement of the Work. prior to resumption of the Work in the event of a temporary suspension lasting longer than 72 hours, and at such other time intervals during the process of the Work as requested by Owner, in order to permit Owner to properly coordinate its normal operations and facilities requirements with the Work.

§ 22.4 The Contractor's payment applications shall be accompanied by the Contractor's Partial Waiver of Lien for the full amount of the payment and by the Partial Waivers or Final Waivers, as applicable, of Subcontractors, Sub-subcontractors and Suppliers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, containing such information and in such form to comply with the Illinois Mechanics Lien Act (770 ILCS 60/001 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and materials suppliers; amounts paid and remaining to be paid to each; together with all other documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

(i) All waivers (partial and final) shall include language as applicable indicating either that:

- a. all material was taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws or
- b. materials were provided by the following suppliers for whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

§22.5 The following definitions are added to the Contract:

"Final completion" means the date the Contract has been fully performed, all the Work has been completed in accordance with the Contract Documents and the Owner has approved Final Payment to the Contractor.

"Indicated" and "shown" mean as described, detailed, discussed, scheduled, referenced, or called for in, or reasonably inferable from the Contract Documents in order to produce a first class Work product.

"Provide" or derivatives thereof means the Contractor shall properly fabricate, supply, furnish or procure all labor, materials, equipment, apparatus, and accessory appurtenances necessary to transport, deliver, install, erect and construct the specified item, complete, in place and ready for operation and use, including any final connections, in strict accordance with the Drawings, Specifications and other Contract Documents. The words "Contractor shall" are implied and shall be so understood whenever the direction or term "provide" is used.

"Unit Price" is an amount stated in the Contractor's bid proposal or in the Contract Documents as a price per unit of measurement for materials, equipment or services for a portion of the Work as described in the Bidding Documents or the Contract Documents. A Unit Price includes all costs associated with the performance of the portion of the Work for which the Unit Price is provided, including but not limited to labor, materials, equipment, loading, transportation, handling, unloading, overhead and profit.

#### **ARTICLE 23 • EQUAL EMPLOYMENT OPPORTUNITY**

§23.1 The Contractor shall maintain and shall require its Subcontractors to maintain policies of employment as follows:

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

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or preference, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to a person's ability to perform the essential functions of the job, association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 2) That, if it hires additional employees in order to perform this Contract or any portions thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental handicap or disability unrelated to a person's ability to perform the essential function of the job, or association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest.
- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's rules and regulations. If any such labor organization or representative fails or



refuses to cooperate with the Contractor in its efforts to comply with such Act and rules and regulations, the Contractor will promptly notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

- 5) That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
- 6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Owner and the Department for purposes of investigation to ascertain Department's rules and regulations.
- 7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract, the Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Owner and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible (or contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

**§23.1.2** The Contractor is encouraged to utilize qualified minority businesses as subcontractors for supplies, services and construction.

#### **ARTICLE 24- COMPLIANCE WITH LAWS/PREVAILING RATES OF WAGES**

**§24.1** The Contractor shall comply with all federal, state, county and local laws, codes, rules and regulations applicable to the Work including without limitation all building codes, permit conditions, the American with Disabilities Act and the equal employment opportunity clause of the Illinois Human Rights Act and the rules and regulations of the Illinois Department of Human Rights, the Illinois Prevailing Wage Act, and all laws and regulations pertaining to occupational and work safety, hours of operation and disposal of construction debris. A copy of the Contractor's certification of compliance with applicable laws is attached to and made a part of this Agreement. A copy of the most current prevailing wages determination of the Illinois Department of Labor (IDOL) is attached to and made a part of this Agreement.

The Contractor shall comply with the requirements of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*) and the Park District's Ordinances requiring payment of prevailing wages. The Contractor shall pay or cause to be paid not less than the prevailing rate of hourly wage in the county the work is performed as determined by the Illinois Department of Labor for the month in which the work is performed including but not limited to all laborers, workers and mechanics. All contractors and subcontractors rendering services under this contract must comply with all requirements under the Act, including but not limited to, all wage, notice and record keeping duties.

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor, regardless of the rates contained in the Contract Documents. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. Current prevailing wage rates are published at the following website:<http://www.state.il.us/agency/idol/Rates/EVENMO/COUNTY.HTM>. The Contractor agrees to indemnify and hold harmless the Park District for any violations of the Prevailing Wage Act.

The Contractor shall also: (1) insert into each subcontract and the project specifications for each subcontract, a written stipulation that the subcontractor shall not pay less than the prevailing rate of hourly wage to all laborers, workers, and mechanics performing work under the contract; and (2) require each subcontractor to insert into each lower-tiered contract and the project specifications for each lower-tiered subcontract, a stipulation that the subcontractor shall not pay less than prevailing rate of hourly wage to all laborers, workers, and mechanics performing work under the contract.

The Contractor shall include on all bonds and shall cause all subcontractors' bonds required under the Contract Documents to guarantee compliance with the Prevailing Wage Act.

Additionally, the Contractor and each subcontractor shall make and keep, for a period of not less than 3 years from the date of the last payment on a contract or subcontract, records of all laborers, mechanics, and other workers employed by them on the Project; the records shall include each worker's name, address, telephone number when available, social security number, classification or classifications, the hourly wages paid in each pay period, the number of hours worked each day, and the starting and ending times of work each day. The Contractor shall submit monthly, no later than the 10<sup>th</sup> day of each calendar month, in person, by mail, or electronically a certified payroll to the Park District with each monthly pay request in the form attached to the Contract Documents. The certified payroll shall be accompanied by a statement signed by the Contractor or subcontractor which states that: (i) he or she has examined the certified payroll and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. The Contractor may rely on the certification of a lower tier subcontractor, provided the Contractor does not knowingly rely upon a subcontractor's false certification. The records submitted in accordance with this payroll submittal provision shall be considered public records pursuant to Section 5 of the Prevailing Wage Act, 820 ILCS 130/5 (2004, as amended by P.A. 94-515). The Park District may, at its option, immediately terminate the Contract in the event that Contractor violates any provision of this paragraph or the Prevailing Wage Act.

Contractor shall also post the prevailing wage rates for each craft or type of worker or mechanic needed to complete the project at either: (1) a location on the project site easily accessible to the workers engaged on the project; or (2) in lieu of posting on the project site, if the Contractor has a business location where laborers, workers, and mechanics may regularly visit, the Contractor may either post the prevailing rate of wages in each county the Contractor works in a conspicuous location or provide the laborers, workers or mechanics engaged on the project a written notice indicating the prevailing rate of wages for the project.

Upon seven business days notice, the Contractor and each subcontractor shall make available for inspection and copying at a location within this State during reasonable hours, the records identified in 820 ILCS 130/5(a)(1) to the Owner, and its officers and agents.

WHEATON PARK DISTRICT

FIELDTURF USA, INC.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.4 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award

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

§ 21.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

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

#### § 21.8 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 20. Nothing contained in this Section 21.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Nicole L. Karas, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:58:45 on 10/10/2013 under Order No. 4329776820\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A107™ – 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

Nicole Karas  
(Signed) *n.l.c.*

Attorney  
(Title)

10-10-13  
(Dated)