



AIA Document A107™ – 2007

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

AGREEMENT made as of the Seventeenth day of May in the year Two Thousand Seventeen
(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

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

Classic Fence
1822 Rt. 30
Oswego, IL 60543

for the following Project:
(Name, location and detailed description)
2017 Fence Projects
Edison School – Baseball Fields
1125 W. Wheaton Ave., Wheaton, IL 60189

The Project includes removal and replacement of backstops, sideline and dugout fences, and player's benches on three ballfields at the school site, and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

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

NA. No Architect is being used for this Project. For purposes of this Project, "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 stated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMENCEMENT, SUBSTANTIAL COMPLETION AND FINAL COMPLETION

§ 2.1 The date of commencement shall be the date 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.

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(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.)

Commencement of Work shall be July 1, 2017.

§ 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 August 1, 2017
(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.)

, 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.)

Time is of the essence of the contract. Should the Contractor fail to complete the Work on or before the Final Completion date as stipulated in the Contract or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$50.00 per calendar day, not as a penalty but as liquidated damages, for each day of overrun in the Contract Time or such extended time as may have been allowed. The liquidated damages for failure to complete the Contract on time are approximate, due to the impracticality of calculating and proving actual delay costs. The costs of delay represented by the liquidated damage amount are understood to be a fair and reasonable estimate of the costs that will be borne by the Owner during extended and delayed performance by the Contractor for the Work. The liquidated damage amount specified will accrue and be assessed until Final Completion of the total physical Work of the Contract even though the Work may be substantially complete. The Owner will deduct these liquidated damages from any monies due or to become due to the Contractor from the Owner.

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
- ☐ [] 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

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

§ 3.2 The Stipulated Sum shall be One Hundred Fifteen Thousand Three Hundred Ninety-two and 00/100 Dollars (\$ 115,392.00) subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

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(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.)

NA

§ 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)
NA		

§ 3.2.3 Allowances included in the stipulated sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Allowance
NA	

(Paragraphs deleted)

§ 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 Bid Proposal, shall be made as follows:

1. 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.

§ 3.2.5 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 associates with such overtime shall be borne by the Contractor.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

(Table deleted)

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

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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.

§ 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 10TH 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

(Paragraphs deleted)

, and any penalties associated with the same, shall be paid in accordance with the provisions of, the Illinois Local Government Prompt Payment Act.

§ 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 achieved Final Completion for the Contractor's responsibility to correct Work as provided in Sections 9.4 and 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 The Subject to Section 4.2.1, the Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and approval by the owner.

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, Special, and other Conditions of the Contract are those included in the Project Manual dated April 19, 2017.

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§ 6.1.3 The Specifications:

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

The Specifications are those included in the Project Manual dated April 19, 2017.

Section	Title	Date	Pages
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§ 6.1.4 The Drawings:

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

The Drawings, if any, are those included in the Project Manual dated April 19, 2017.

Number	Title	Date
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§ 6.1.5 The Addenda, if any:

Number	Date	Pages
NA		

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

(Paragraphs deleted)

Other documents forming a part of the Contract Documents;

(List here any additional documents that are intended to form part of the Contract Documents.)

- a. Project Manual for 2017 Fence Projects, dated April 19, 2017, a copy of which is incorporated in this Agreement by reference.
- b. Contractor's Proposal, dated May 2, 2017, a copy of which is incorporated in this Agreement by reference.
- c. Contractor's Compliance and Certification, a copy of which is attached to and incorporated in this Agreement as Exhibit A.
- d. Insurance Requirements and certificate attached to and incorporated in this Agreement as Exhibit B.
- e. Performance Bond and Labor Material Payment Bond, copies of which are attached to and incorporated in this Agreement as Exhibits C-1 and C-2.

ARTICLE 7 GENERAL CONDITIONS OF THE CONTRACT

§ 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.

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§ 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.

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 but shall 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, 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

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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, 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 Contract Documents 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 therein 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 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 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.

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 and having visited the Project site it has no actual knowledge of any discrepancies, omissions, ambiguities, or conflicts in or between the Contract Documents except those, if any, which have been clarified by Architect by Addenda to the Contractor's satisfaction, 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 bid 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

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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 evaluate 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, 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.

(Paragraph deleted)

§ 9.2.

§ 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 and experienced 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.

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§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' or suppliers' 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 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 specify 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 warrant. This warranty shall not be restricted by the limitations of any manufacturer's or supplier'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 unless otherwise provided in any Certificate of Partial or Substantial Completion approved by the Owner and the Contractor or Subcontractor, as applicable, but only with respect to warranties for that specific portion of the Work, and shall run for a twelve (12) month period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. The Contractor shall consult with the Owner prior to the

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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.

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.

§9.5 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

§ 9.6.1 – Intentionally omitted.

§ 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.

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.

§ 9.7 – Intentionally omitted.

§ 9.8

§ 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.

§ 9.9

§ 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.

(Paragraphs deleted)

§9.10

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

§9.10.2 Property Corners. Existing property corners on the site shall be replaced by a registered Land Surveyor at the Contractor's expense.

§9.10.3 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.

§9.10.4 Fencing. The Contractor will be responsible for erecting and maintaining construction fencing around the limits of the Project site at all times of construction. Failure to erect or maintain this fencing will result in the correction of the problem by the Park District at the expense of the Contractor. The Contractor's expense will be back charged to the contract, and may include, but are not limited to, the cost of any materials and staff time. This fence must be installed and fully erected before construction operations beginning and tied-up at the end of each working day. All construction fencing must conform to the following specification.

.1 Flexible Safety Fence. High density poly fabric, rigid 2" mesh design, heavy duty strength, 4' high, safety orange.

.2 Posts. Minimum 14 gauge painted green steel channel posts, min. 5'-6" long driven 18" into the ground, Post spacing shall be 12' O.C. with fence tied to each post top, middle and bottom.

.3 Tie Material. Heavy gauge vinyl coated wire.

§9.10.5 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.

§9.11 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.

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

§9.13-9.14 are deleted intentionally.

§ 9.15

§ 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, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is 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 there from and (ii) is caused

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in whole or in part by any wrongful or negligent act or omission of the Contractor, 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 any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Contract.

§ 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 Omitted.

§ 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 and Architect.

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§ 10.10 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 who or which 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 subcontract 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 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

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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.

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§ 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.

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 and for Final 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

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equipment stored, and protected from damage and loss, 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 The first Application for Payment shall be accompanied by the Contractor's Partial Waiver of Lien to date for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver of Lien and the Partial Waivers by of subcontractors and suppliers who were included in the immediately preceding payment application to the extent of that payment. The 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 and the Final Waiver of a Subcontractor shall be for the full amount of its Subcontract. All applications for payment shall be accompanied by affidavits from the Contractor, 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 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 were 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.

§ 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 or notify the 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 to the best of the Architect's knowledge, information and belief 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

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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

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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 Final 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 Contractor's completion and Owner's approval of the Punch List items.

§ 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 and supplier's warranties, operating manuals, as-build 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.

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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 brought on site by Contractor, 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 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 under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor, or by a Subcontractor or by 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

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- .3 Contractor's employees;
- .4 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;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 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

(Paragraphs deleted)

OWNER'S LIABILITY AND PROPERTY 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 Article 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 17.2.1 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.

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§ 17.2.6 Partial occupancy or use 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 Article 17, 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 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.

(Paragraphs deleted)

§ 17.4

§ 17.4.1 - Intentionally omitted.

§ 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. The cost of the bonds is to be included in the Contract Sum stated by the Contractor in its Bid Proposal.

§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

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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. 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. 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 the longer of twelve (12) months after the completion of the corrective Work or one (1) year from the date of Final Completion of the Work, or such longer period of time as may be prescribed by law or in equity or by the terms of any applicable special warranty. Notwithstanding the foregoing, Contractor shall correct Work deficiently or defectively performed and replace defective or non-conforming materials and equipment, even though such deficiency, defect or non-conformity may be discovered more than one (1) year after Final Completion, if the correction is of a latent defect and arises from poor workmanship or improper materials or equipment, or is required to be made to Work, materials or equipment covered by the Contractor or a Subcontractor contrary to the Architect's or Owner's request or to the request of a governmental officer, or to the requirements of the Contract Documents or Governmental Requirements, and was therefore not visible for inspection by the Architect, Owner or governmental officer, as applicable, at the time of inspection. 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.

§ 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

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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, 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)

§ 20.1 TERMINATION OR SUSPENSION OF THE CONTRACT

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 the Owner fails to make payment and has not notified Contractor of the reason for withholding payment as provided in Section , 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 unless this reason is cured prior to the expiration of the notice period, and recover from Owner payment of Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) provided said Work was authorized in advance by Owner. The Owner shall have the right to cure any defect or default prior to the date of termination stated in any written notice from Contractor as provided herein, in which event 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 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 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. .

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§ 20.2.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and consultants services and expenses made necessary thereby legal fees, 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.

§ 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

§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:

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 In the event of termination by Owner for convenience, the sum payable to the Contractor for the Work shall be prorated based upon 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.

§20.3.4 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.

§20.4 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

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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 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.

§22.5 Except as otherwise specifically provided in the Contract Documents, if and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Contract Document, and otherwise in interpreting the Contract Documents, the Parties shall give precedence to the Contract Documents in the following order of priority:

- (i) Modifications.
- (ii) This Agreement, not including the General Conditions of the Contract;
- (iii) Special and Supplementary Conditions.
- (iv) Specifications;
- (v) General Conditions of the Contract

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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

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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.

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:

<http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx> . . 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 5 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 10th 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 required by the Illinois Prevailing Wage Act. 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.

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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.

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

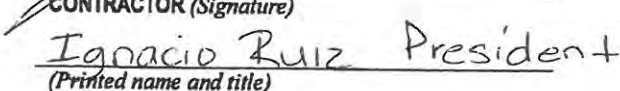
WHEATON PARK DISTRICT


OWNER (Signature)


(Printed name and title)

CLASSIC FENCE, INC.


CONTRACTOR (Signature)


(Printed name and title)

(Table deleted)

(Paragraphs deleted)

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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 09:19:21 on 05/24/2017 under Order No. 1549258185_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)

Attorney

(Title)

5/24/17

(Dated)