

# **AIA**® Document A101™ – 2007

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

**AGREEMENT** made as of the Eighteenth day of April in the year Two Thousand Eighteen  
(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)

Copenhaver Construction, Inc.  
75 Koppie Drive  
Gilberts, IL 60136

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

Arrowhead Golf Clubhouse Exterior Stair and Sidewalk Improvements Project  
26W151 Butterfield Road  
Wheaton, IL 60189

The Project includes exterior repairs and improvements to the Golf Clubhouse building including, but not limited to, masonry repair, removal and replacement of concrete stairs, walks, pavers, railings and associated reinforcement, application of sealants at various surfaces, and other miscellaneous, related work as described in the Contract Documents, 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)

Williams Architects  
500 Park Boulevard, Ste. 800  
Itasca, IL 60143

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.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not applicable to this Contract.

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§ 3.2 The Contract Time shall be measured from the Commencement Date.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than  
(Paragraphs deleted)

May 25, 2018 and shall achieve Final Completion of the entire Work not later than June 1, 2018, subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents (hereinafter referred to as the "Substantial Completion Date"). The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial 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 above, or within such extended time as may have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$100.00 per calendar day, not as a penalty but as a 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 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Hundred Six Thousand and 00/100 Dollars (\$ 206,000.00 ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract 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:

(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.)

Alternate No. 1 Electric Snow Melt System at Bar/Restaurant Stair and Sidewalk: Add \$4,500.00

Alternate No. 2 Removal and Replacement of Stairs and Concrete – Southwest at Pro Shop: Add \$31,500.00

Alternate No. 3 Removal and Replacement of Stairs and Concrete – South at Pro Shop: Add \$45,000.00

§ 4.3 Unit prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference. :

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

Item	Units and Limitations	Price Per Unit (\$0.00)
Brick	Sq. Ft.	\$3.00
Concrete	Sq. Ft.	\$4.50

§ 4.4 Allowances included in the Contract Sum, if any:

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

Item	Price
NA	

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**§ 4.5** Adjustments to the Contract Sum for changes in the Work (other than for changes in the Work involving items for which unit prices were provided as set forth in Section 4.3, above) shall be made in accordance with Article 7 of the General Conditions of the Contract, provided that in the case of an increase in the Contract Sum attributable to a change in the Work, "reasonable overhead and profit" for purposes of Section 7.3.7 thereof shall mean: 1. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or 2. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent 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. No overhead and profit shall be paid to the Contractor for an increase in the cost of the surety bond or insurance premiums resulting from a change in the Work. In the event of an increase in the Contract Sum resulting from an additive change order, the actual amount of any increase in the cost of Contractor's surety bond shall be added to the amount of the change order. Similarly in the event of a decrease in the Contract Sum resulting from a deductive change order, the amount of any decrease in the cost of Contractor's surety bond shall be added to the amount shown in the deductive change order, by which the Contract Sum is to be reduced.

**§ 4.6** Overtime, if and when specifically authorized in writing in advance 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 workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

## **ARTICLE 5 PAYMENTS**

### **§ 5.1 PROGRESS PAYMENTS**

**§ 5.1.1** Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by 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.

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

**§ 5.1.3** Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application 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.

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to



substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

**§ 5.1.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 may be further modified *(Paragraphs deleted)* and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.

**§ 5.1.8** Reduction or limitation of retainage, if any, shall be as follows:  
*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

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

## **§ 5.2 FINAL PAYMENT**

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

- .1 the Contractor has fully performed the Contract in accordance with the Contract Documents; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Section 12.2.2 of AIA Document A201-2007 or as otherwise specified by the Contract Documents, or to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect and the Owner has approved payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 45 days after the conditions set forth in Section 5.2.1, above, have been met.

## **§ 5.3 WAIVER PROCEDURE/FORMAT**

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

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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:
1. All materials 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
  2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1**

*(Paragraphs deleted)*

The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.

*(Paragraphs deleted)*

## **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended, superseded or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due

*(Paragraphs deleted)*

and at the rate provided under the Illinois Local Government Prompt Payment Act.

**§ 8.3** The Owner's representative:

*(Name, address and other information)*

Steve Hinchee  
Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
T: 630-510-4976  
Email: shinchee@wheatonparks.org

**§ 8.4** The Contractor's representative:

*(Name, address and other information)*

Ken Copenhaver Copenhaver Construction, Inc.  
75 Koppie Drive  
Gilberts, IL 60136  
T: 847-428-6696  
Email: copenhaverinc@yahoo.com

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

§ 8.6 Other provisions:

§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

§ 8.6.2 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. The 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.

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

§ 8.6.4 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
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

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

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor, as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by Owner.

§ 9.1.3 The Supplementary, Special and other Conditions of the Contract are those included in the Project Manual dated March 7, 2018.  
(Table deleted)

§ 9.1.4 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 March 7, 2018.

(Table deleted)  
§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)  
The Drawings are those included in the Project Manual dated March 7, 2018.

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Number	Title	Date
<i>(Row deleted)</i>		
§ 9.1.6 The Addenda, if any:		

Number	Date	Pages
No. 1	March 22, 2018	2 plus attachments
Nol. 2	March 27, 2018	1 plus 1 page of attachments

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

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

1. All other documents contained in the Project Manual dated March 7, 2018. .
2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.
3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.
4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this Agreement by this reference.
5. Contractor's Proposal, as modified by the Contract Documents, attached to and incorporated in this Agreement by this reference.
6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

#### ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(Table deleted)(Paragraph deleted)*

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

WHEATON PARK DISTRICT

COPENHAVER CONSTRUCTION, INC.

OWNER *(Signature)*

CONTRACTOR *(Signature)*

*(Printed name and title)*

*(Printed name and title)*

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# Additions and Deletions Report for AIA® Document A101™ – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:57:20 on 04/24/2018.

## PAGE 1

AGREEMENT made as of the Eighteenth day of April in the year Two Thousand Eighteen

...

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187

...

Copenhaver Construction, Inc.  
75 Koppie Drive  
Gilberts, IL 60136

...

Arrowhead Golf Clubhouse Exterior Stair and Sidewalk Improvements Project  
26W151 Butterfield Road  
Wheaton, IL 60189

The ~~Architect~~ Project includes exterior repairs and improvements to the Golf Clubhouse building including, but not limited to, masonry repair, removal and replacement of concrete stairs, walks, pavers, railings and associated reinforcement, application of sealants at various surfaces, and other miscellaneous, related work as described in the Contract Documents, and all other and incidental and collateral work necessary to properly complete the Project as indicated in the Contract Documents.

The Architect

...

Williams Architects  
500 Park Boulevard, Ste. 800  
Itasca, IL 60143

## PAGE 2

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

...

The date of commencement of the Work shall be fixed by a Notice to Proceed (hereinafter referred to as the "Commencement Date"). Prior to commencing the Work, the Contractor shall have obtained and provided to the Owner acceptable evidence of all licenses, permits, bonds and insurance indicated as being the Contractor's responsibility under the Contract Documents. Delay in the commencement of the Work attributable to the failure of the Contractor to have obtained and provided such evidence to the Owner shall not result in an extension of the date scheduled for Substantial Completion as provided in Section 3.3 below, or in any milestone date previously agreed to by the Parties in any Project Schedule.

...

Not applicable to this Contract.

§ 3.2 The Contract Time shall be measured from the ~~date of commencement~~ Commencement Date.

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

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

#### Portion of Work

#### Substantial Completion Date

May 25, 2018 and shall achieve Final Completion of the entire Work not later than June 1, 2018, subject to adjustments of this Contract Time authorized by Change Order as provided in the Contract Documents (hereinafter referred to as the "Substantial Completion Date"). The Owner and Contractor agree that the amount of time given to the Contractor under the Contract to achieve Substantial Completion is a reasonable amount of time considering the requirements of the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial 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 above, or within such extended time as may be have been allowed, the Contractor shall be liable and shall pay to the Owner the sum of \$100.00 per calendar day, not as a penalty but as a 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.

PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Hundred Six Thousand and 00/100 Dollars (\$ 206,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract 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:

*(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.)*

Alternate No. 1 Electric Snow Melt System at Bar/Restaurant Stair and Sidewalk: Add \$4,500.00



Alternate No. 2 Removal and Replacement of Stairs and Concrete – Southwest at Pro Shop: Add \$31,500.00  
Alternate No. 3 Removal and Replacement of Stairs and Concrete – South at Pro Shop: Add \$45,000.00

§ 4.3 Unit prices, if any, prices are pursuant to Contractor's Proposal, as modified by this Agreement, attached to and incorporated into this Agreement by reference. :

...

<u>Brick</u>	<u>Sq. Ft.</u>	<u>\$3.00</u>
<u>Concrete</u>	<u>Sq. Ft.</u>	<u>\$4.50</u>

...

NA

§ 4.5 Adjustments to the Contract Sum for changes in the Work (other than for changes in the Work involving items for which unit prices were provided as set forth in Section 4.3, above) shall be made in accordance with Article 7 of the General Conditions of the Contract, provided that in the case of an increase in the Contract Sum attributable to a change in the Work, "reasonable overhead and profit" for purposes of Section 7.3.7 thereof shall mean: 1. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or 2. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent 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. No overhead and profit shall be paid to the Contractor for an increase in the cost of the surety bond or insurance premiums resulting from a change in the Work. In the event of an increase in the Contract Sum resulting from an additive change order, the actual amount of any increase in the cost of Contractor's surety bond shall be added to the amount of the change order. Similarly in the event of a decrease in the Contract Sum resulting from a deductive change order, the amount of any decrease in the cost of Contractor's surety bond shall be added to the amount shown in the deductive change order, by which the Contract Sum is to be reduced.

§ 4.6 Overtime, if and when specifically authorized in writing in advance 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 workforce so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents, or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associated with such overtime shall be borne by the Contractor.

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§ 5.1.1 Based upon Applications for Payment properly completed and accompanied by all supporting documentation and other submittals required by the Contract Documents submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, and agreed to by 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.

...

§ 5.1.3 Provided that an Application for Payment, which is in proper form and accompanied by required supporting documents and submittals, is received by the Architect not later than the 10th day of a month, certified for payment by the Owner and not subsequently nullified by the Owner in accordance with the Contract Documents, the

Owner shall make payment of the certified amount to the Contractor not later than the 15th day of the following month. If an Application for Payment is received by the Architect after the application 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.~~ (Federal, state or local laws may require payment within a certain period of time.) 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.

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- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10 %);

...

**§ 5.1.7** The progress payment amount determined in accordance with Section 5.1.6 ~~shall~~ may be further modified under the following circumstances:

- ~~.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)~~
- ~~.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007 and the retainage may be reduced if and as provided in Paragraph 9.3 of the General Conditions.~~

...

- .1 the Contractor has fully performed the Contract ~~except for the Contractor's responsibility in accordance with the Contract Documents; provided that Owner shall have no obligation to make final payment if the Contractor is required to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and A201-2007 or as otherwise specified by the Contract Documents, or to satisfy other requirements, if any, which extend beyond final payment; and~~
- .2 a final Certificate for Payment has been issued by ~~the Architect~~ the Architect and the Owner has approved payment.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~ 45 days after the conditions set forth in Section 5.2.1, above, have been met.

...

### **§ 5.3 WAIVER PROCEDURE/FORMAT**

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:

1. All materials 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
2. Materials were provided by the following suppliers from whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

#### **§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

The Parties shall make claims and resolve disputes as provided in Article 15 of the General Conditions and elsewhere in the Contract Documents.

#### **§ 6.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ Litigation in a court of competent jurisdiction

☐ Other (Specify)

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**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as ~~amended~~ amended, superseded or supplemented by other provisions of the Contract Documents.

**§ 8.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due ~~at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~  
*(Insert rate of interest agreed upon, if any.)*

~~—%—~~ and at the rate provided under the Illinois Local Government Prompt Payment Act.

...



Steve Hinchee  
Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187  
T: 630-510-4976  
Email: shinchee@wheatonparks.org

...

Ken Copenhaver Copenhaver Construction, Inc.  
75 Koppie Drive  
Gilberts, IL 60136  
T: 847-428-6696  
Email: copenhaverinc@yahoo.com  
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§ 8.6.1 Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing the Work. Contractor's bonds shall include a provision as will guarantee the faithful performance of this prevailing wage clause as herein provided and as provided in the General Conditions. Contractor shall comply with all other requirements of the Prevailing Wage Act.

§ 8.6.2 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. The 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.

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

§ 8.6.4 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
- (iii) Supplementary and Special Conditions.
- (iv) General Conditions
- (v) Construction Drawings

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

...

§ 9.1.1 The Agreement is this executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor-Contractor, as modified by Owner.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction-Construction, as modified by Owner.

§ 9.1.3 The Supplementary and other Conditions of the Contract:  
Supplementary, Special and other Conditions of the Contract are those included in the Project Manual dated March 7, 2018.

Document	Title	Date	Pages
----------	-------	------	-------

...

The Specifications are those included in the Project Manual dated March 7, 2018.

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

...

The Drawings are those included in the Project Manual dated March 7, 2018.

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...

No. 1	March 22, 2018	2 plus attachments
Nol. 2	March 27, 2018	1 plus 1 page of attachments

...

~~4. AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~

~~1. All other documents contained in the Project Manual dated March 7, 2018..~~

~~2. Certificate of Insurance and endorsements attached to and incorporated in this Agreement by this reference.~~

~~2. Other documents, if any, listed below:~~ 3. Performance Bond, Labor and Material Payment Bond, attached to and incorporated in this Agreement by this reference.

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.) 4. Prevailing Wage Determination and supersedes notice attached to and incorporated in this Agreement by this reference.

5. Contractor's Proposal, as modified by the Contract Documents, attached to and incorporated in this Agreement by this reference.

6. Contractor's Compliance and Certifications Attachment and Substance Abuse Prevention Program Certification, attached to and incorporated in this Agreement by this reference.

...

~~(State bonding requirements, if any, and limits of liability for insurance required in Article II of AIA Document A201-2007.)~~

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

...





## **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 10:57:20 on 04/24/2018 under Order No. 2136325583 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



\_\_\_\_\_  
(Signed)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
4/24/18

\_\_\_\_\_  
(Dated)





# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Arrowhead Golf Clubhouse Exterior Stair and Sidewalk Improvements Project  
26W151 Butterfield Road  
Wheaton, IL 60189

### THE OWNER:

*(Name, legal status and address)*

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187

### THE ARCHITECT:

*(Name, legal status and address)*

Williams Architects  
500 Park Boulevard, Ste. 800  
Itasca, IL 60143

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### 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 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, Advertisement for Bids, Invitation & Instructions to Bidders, Conditions (General, Supplementary and Special Supplementary), Proposal, Surety Bond, Performance Bond, Labor and Material Payment Bond, Plans, Drawings, Specifications, Addenda, Bulletins, Supplemental Plans, Supplemental Specifications, and Standards & Specifications pursuant to Paragraph 1.5.4 below, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract approved by the Owner and signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor provided, however, Owner shall be a third party beneficiary of any Subcontract agreement under the circumstances set forth in Article 5 herein, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

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

*(Paragraphs deleted)*

§1.1.7 "As selected", or "as approved", or "satisfactory to", or "as required", or "as directed" mean as selected, approved, required or directed by the Owner or by the Architect acting for the Owner, unless otherwise specified in the specific provision in which the term is used.

§1.1.8 "Final Completion" means the date the Contract has been fully performed, all the Work has been completed and a final Certificate for Payment approved by the Owner has been issued by the Architect.

§1.1.9 "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.

§1.1.10 "Or equal", "approved equal", or "equal to" mean that the determination whether an alternative product or system is equal to that indicated or specified shall be made by the Owner.

§1.1.11 "Provide" or derivatives thereof means the Contractor shall properly fabricate, supply, furnish or procure all

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labor, materials, equipment, apparatus, and accessory appurtenances necessary to transport, deliver, install, erect and construct the specified item, complete, in place, fully tested 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 wherever the direction "provide" is used.

**§1.1.12 "Punch List Items"** shall mean and shall be limited to uncompleted items of the 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.

**§1.1.13 "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 and Architect as such, subject only to minor Punch List Items which do not affect full use and enjoyment," and the Contractor has completed all Work necessary in order for the Owner to receive all required occupancy permits.

#### **§ 1.1.14 THE PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

**§ 1.2.1** The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work "indicated" in or from the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all. By its execution of the Contract, the Contractor shall represents, acknowledges and agrees that any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves or any conflicts between the Contract Documents and applicable standards, codes and ordinances, have been referred to the Owner and Architect by Contractor prior to submission of bids and have been clarified by an Addendum issued to all bidders.

If any such differences or conflicts were not called to the Owner's and Architect's attention prior to submission of bids, the Architect shall decide which of the conflicting requirements will govern based upon the most stringent or highest quality of the requirements, and, subject to the approval of the Owner, the Contractor shall perform the Work at no additional cost and/or time to the Owner in accordance with the Architect's decision. Work not indicated in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results.

Large scale drawings shall take precedence over small scale drawings; figured dimensions on drawings over scaled dimensions and noted material over graphic representations.

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

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Unless specifically stated as an obligation of the Owner, it is understood to be an obligation of the Contractor.

**§1.2.4** All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Architect and Owner.

### **§ 1.3 CAPITALIZATION**

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

*(Paragraphs deleted)*

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#### § 1.4.1 INTERPRETATION

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

#### § 1.4.2 HEADINGS.

The headings for each paragraph of the Contract Documents are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of the Contract Documents nor in any way affect the Contract Documents.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER PROJECT DOCUMENTS

§ 1.5.1 The Contract Documents are owned and copyrighted by the Owner. No Contractor, Subcontractor or Materialman shall retain or claim ownership or copyright of Contract Documents. No Contractor, Subcontractor or Materialman shall use any Contract Document for another project. All Contractors and Subcontractors have a limited license to reproduce portions of Contract Documents for this project, which cannot be obtained from Architect or Owner.

The Architect and Owner shall be deemed the owners of the Project Documents, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Project Documents. 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 or Owners reserved rights.

§ 1.5.2 The Contractor hereby specifically acknowledges and declares, and the execution of the Contract by the Contractor is a representation of the Contractor that the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, 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 Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the site, examined all physical and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site, including, without limitation, surface conditions of the site and subsurface conditions readily observable or ascertainable upon the exercise reasonable diligence and 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; (2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it has an obligation to and will promptly notify Owner and Architect of such fact, and will not proceed until it shall have received the written interpretation of Owner or Architect.

Claims for additional compensation or extensions of time because of the failure of the Contractor to familiarize himself with the conditions enumerated in the Contract Documents and other conditions of the site which might affect the Work, or because of the failure of the Contractor to obtain a needed interpretation before proceeding with the Work, will not be allowed.

## § 1.6 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 transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, excluding matters requiring approval by the Board of Park Commissioners or the Executive Director. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 Intentionally omitted.

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

#### § 2.2.1

**Decision of the Owner.** All work done under this Contract shall be done to the satisfaction of the Owner who shall in all cases determine the amount of work done which is to be paid for under this Contract. The Owner shall decide all questions that may arise as to the measurements of quantities and the fulfillment of this Contract on the part of the Contractor, and shall determine all questions concerning the true intent or meaning of the Plans and Specifications and his determination and decision shall be final and conclusive.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The furnishing of surveys by the Owner is not a guarantee of the accuracy of the information contained therein, and shall not relieve the Contractor from its duties under the Contract Documents in general. The submission of a bid for the work implies that the Contractor had examined the site, taking into consideration all such conditions that may affect the work, regardless of the information contained in the surveys.

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

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time or fails to remove and discharge (within ten days) any lien filed upon Owner's funds by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, or fails to carry out any portion of the Work in accordance with the Contract Documents, or in the event an emergency arises that requires the Work to be stopped, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the emergency no longer exists; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Owner and Architect shall at all times have access to the Project Site for purposes of inspection whenever the Work is in preparation and progress.

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#### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 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 2.3 thereof, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the actual cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### **§2.5 OWNER'S REMEDIES NOT EXCLUSIVE**

The rights and remedies of Owner stated in this Article 2 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 3 CONTRACTOR**

#### **§ 3.1 GENERAL**

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

It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents. High quality craftsmanship will be expected in all phases of work. Any elements found unacceptable and not in compliance with the Contract Documents will be removed and replaced by the Contractor until satisfactory results are obtained.

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

#### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, evaluated the local conditions under which the Work is to be performed and, except for concealed conditions or those unknown to Contractor, found the site suitable for completing the Work in compliance with requirements of the Contract Documents. Furthermore, execution of the Contract by the Contractor is a representation that the Contract Documents include the construction details, means, methods, procedures and techniques necessary to perform the Work.

Before submitting its bid proposal the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner pursuant to Section 2.2.2 and shall at once report to the Architect and Owner errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents that could not have been discovered by a reasonably diligent contractor experienced in performance of the type of work of the Work of this Project in advance of performance and that are not of the nature of items described in and intended to be covered in Sections 1.2.1 and 1.5.2 hereof, unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner and Architect. If the Contractor performs any construction activity involving an error, inconsistency or omission in the Contract Documents that the Contractor recognized or reasonably should have recognized and of which Contractor failed to notify the Owner and Architect,

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the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

**§3.2.1.1.** If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any employee or agent of the Contractor, or any of its Subcontractors, the Contractor shall be responsible for notifying the Owner and Architect in writing of such error, inconsistency, or omission before proceeding with the Work. The Architect will take such notice under advisement and within a reasonable time commensurate with job progress render an interpretation. The Architect's interpretation shall be subject to Owner's approval. If the Contractor fails to give such notice and proceeds with such Work, it shall correct any errors, inconsistencies, or omissions at no additional cost to the Owner.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents, except to the extent that such errors, omissions or inconsistencies affect Contractor's services; however, the Contractor shall promptly report to the Architect and the Owner 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 and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided, including any increases in construction costs, if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner and Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

**§3.3.4** The Contractor 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

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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.

**§ 3.3.5** The Contractor shall establish and maintain bench marks and all other grades, lines and levels necessary for the Work, report errors or inconsistencies to the Owner and Architect before commencing Work, and review the placement of the building(s) and permanent facilities on the site with the Owner and Architect after all lines are staked out and before foundation Work is started. The Contractor shall provide access to the Work for the Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by the Contractor or its Subcontractors (of any tier) on adjacent properties due to construction as revealed by an improvement survey, except for encroachments arising from errors or omissions not reasonably discoverable by the Contractor in the Contract Documents shall be the sole responsibility of the Contractor, and the Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at the Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

#### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** The Contractor may make substitutions 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 Change Order or Construction Change Directive.

**§ 3.4.3** Except as provided in 3.4.2, the materials specified have been determined to have characteristics appropriate for the purposes of this Project. No work will be acceptable which utilizes an alternate not approved during the bidding process.

**§ 3.4.4** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

**§ 3.4.5** Before ordering any material or doing any Work, the Contractor shall verify all measurements at the Project Site and he 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.

**§ 3.4.6** The Contractor shall carefully inspect all materials delivered on and to the Project Site and reject defective materials without waiting for the Architect or other representative of Owner to observe the materials.

**§ 3.4.7** Contractor shall maintain harmonious labor relations on the job site. If a labor problem arises or 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.

### § 3.5 WARRANTY

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.

The warranty will not be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedures and advises the Architect and Owner of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, or improper operation. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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 Architect upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in these Supplementary Conditions, elsewhere in the Contract Documents, or in any Certificate of Substantial Completion approved by Owner and Contractor and/or Subcontractor, as applicable, all warranties shall become effective on the date of Final Completion of the entire Work, and shall run for a 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.

§3.5.2.1 If materials or equipment are replaced during the original warranty period, a new warranty period thereon shall then begin from the date that such corrective action is completed and approved.

§3.5.2.2 For concrete work, warranty protection for a repaired item shall be for twenty-four months after final acceptance of concrete work or the length of the original warranty period, whichever is longer. This will cover structural failures, as well as surface erosion due to spalling caused by frost popping soft aggregates within the concrete and surface erosion due to faulty workmanship. All concrete work not meeting high industry standards will be removed and replaced at no charge to the Owner.

§3.5.2.3 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.

§3.5.2.4 Correction of defective or non-conforming Work shall include, in addition to that described in Article 12, any damage to the Project or other property that may result from such defective or nonconforming Work or from such corrective action, including without limitation any damage to any contents, to the work of other contractors, or to adjacent property.

§3.5.2.5 The Contractor shall furnish maintenance and twenty-four (24) hour callback service for the equipment provided by Contractor, Subcontractor or supplier for a period of at least six (6) months after Final Completion and acceptance of the Work, or for such longer period as shall otherwise be provided in any of the Contract Documents. This service shall include regular examinations of the installation by competent and trained employees of the Contractor, or manufacturer, and shall include all necessary adjustments, greasing, oiling, cleaning, supplies and parts to keep the equipment in proper operation except such parts made necessary by misuse, accidents or negligence not caused by the Contractor or any of its Subcontractors.

§3.5.2.6 The warranty provided in this Paragraph 3.5 shall be in addition to and not in limitation of, any other warranty or remedy required under the Contract Documents or under applicable law.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to

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go into effect. The Illinois State sales tax is not applicable to the Project with respect to materials, equipment and supplies incorporated in the Work or totally consumed in the performance of the Work. The Contractor shall pay unemployment and Social Security taxes and other taxes imposed by local, city, state or federal government with respect to Contractor's own personnel and certify to Owner that this has been done before payment is made to the Contractor.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded except as indicated in 2.2.2 herein.

**§ 3.7.2** Contractor shall comply with and give notices required by laws, ordinances, codes, rules, regulations and lawful orders of public authorities having jurisdiction over all or any part of the Work or any insurance organizations (collectively, "Legal Requirements") relating to the Work of the performance thereof. If the Contractor fails to give any such notice or to permit any inspection, it shall be responsible for and shall indemnify and hold harmless, the Owner, the Architect and their respective consultants, employees, officers and agents against and from any resulting Work delays, fines, penalties, judgments or damages, including without limitation reasonable attorneys' fees and court costs imposed on, or suffered, sustained or incurred by, any of the parties indemnified hereunder. The Contractor shall also be liable to the Owner for any delay in the performance of the Work or increase in the cost of the Work resulting from the Contractor's failure to fully comply with the provisions of this Subparagraph 3.7.2. If the Contractor performs Work that it knows or reasonably should have known would be contrary to Legal Requirements, without such notice to the Architect and the Owner, the Contractor shall assume full responsibility for such Work and delays and shall bear the attributable costs.

*(Paragraphs deleted)*

**§ 3.7.2.1** If the Contractor observes that portions of the Contract Documents are at variance with Legal Requirements, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§ 3.7.2.2** Copies of any and all permits, licenses and certificates shall be delivered to the Architect and Owner as soon as they are obtained. The Contractor shall deliver the originals of such permits, licenses and certificates to the Architect together with the Contractor's application for final payment.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and the Contract Sum or time for performance of the Work shall not be adjusted. If either party disputes this determination or recommendation, that party may proceed as provided in Article 15.

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

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**§ 3.7.6** Contractor shall comply with all public and private utility requirements relating to the Work or the performance thereof. If the Contractor performs Work contrary to applicable utility requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

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

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

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

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's competent superintendent shall have the knowledge and control of all work under this Contract and shall communicate directly to the Owner upon request.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect or Owner requires additional time to review. Failure of the Architect to reply within the 14 day period, or any extension of said time period, shall constitute notice of no reasonable objection.

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

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

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information 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, 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.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.10.4 Construction Engineering Check.** The Contractor shall notify the Owner three (3) business days in advance of all grading, drainage, and other major items of construction for field checking of construction engineering. All

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questions pertaining to the Plans, Specifications and details of the work shall be directed to the Owner and cleared prior to construction.

**§ 3.10.5 Contractor's Construction Schedule.** The Contractor shall provide regular monitoring and updating of the Progress Schedule with monthly Update Reports submitted contemporaneously with the monthly pay application, or more frequently as required by the conditions of the Work. The update report shall indicate progress achieved and activities commenced or completed within the last month.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

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

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

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

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

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

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner will and the Architect shall specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner and Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Architect has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

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

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

### **§ 3.13.4 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 the existing asphalt.

**§ 3.13.5 Fencing.** The Contractor will be responsible for erecting and maintaining all construction fencing required by applicable law, regulation, rule, ordinance or code at all times of construction. Failure to erect or maintain this fencing will result in the correction of the problem by the Owner 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. Required fencing 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 Specifications and as required by applicable law. specification.

**§ 3.13.6 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

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payment for removal of said water to existing drainage swales, storm sewers or other natural or man-made drainage ways.

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

**§ 3.15.3** The Contractor shall walk the site at the close of every work day to assure it is either free of waste material and rubbish, or the waste material and rubbish is secured in a container that is inaccessible to park patrons.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall waive all right of contribution 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 therefrom and (ii) is caused 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.



In any and all claims against the Owner or the Architect or any of their agents or employees and consultants by any employee of any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

"Claims," "damages," "losses" and "expenses" as these words are used in this Agreement shall be construed to include, but not limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment or other mechanical or structural contrivance erected or constructed by any person, or any or all other kinds of equipment whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained herein; (3) (3) all costs and expenses incurred by the indemnified party and (4) error or omission or defect in any submission made to Architect / Architect for its approval or review.

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

**§ 3.18.3** The indemnification obligations of the Contractor under this Contract are limited only to the extent required under the Construction Contract Indemnification for Negligence Act (740 ILCS 35/0.01 et seq.).

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

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

**§ 4.2.2** The Architect as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to supervise and to keep the Owner informed about the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and 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

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deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION**

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

**§ 4.2.5** Based on the Architect's observations and evaluations of the progress and quality of Work and Contractor's Applications for Payment, the Architect will review and, after consultation with Owner, certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner and the Architect considers it necessary or advisable, the Owner or the Architect will have the responsibility and authority, subject to Owner's approval, to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner or the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner or the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Owner and Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All Change Orders, Construction Change Directives, and field directives shall require the written approval of Owner in order to be binding on Owner.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and approval, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

*(Paragraph deleted)*

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

### § 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 30 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect or Owner requires additional time for review. Failure of the Owner or Architect to reply within the 30 day period or any extension thereof shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 In the event of a conflict between the Owner and Architect regarding the selection of Subcontractors, the Owner's decision shall govern.

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, 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

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

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

##### **§ 5.4.1**

*(Paragraphs deleted)*

All subcontract agreements shall conform to the requirements of the Contract Documents and the Contractor hereby assigns to Owner (and Owner's permitted assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by 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 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. Upon such acceptance by Owner, (1) the Contractor shall promptly furnish to the Owner true and correct copies of the designated subcontract agreements and purchase orders, 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 Owner's acceptance of the subcontract agreement(s) or purchase order(s) shall constitute a debt between such parties and the Contractor. It is further agreed that no subcontract agreement or purchase order shall contain any restriction that would prohibit assignment under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract with the Contractor and may not be withdrawn prior to Final Completion.

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

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

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

##### **§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ 6.1.1** The 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 15.

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

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

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

## § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 10.2.5.

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

§ 6.2.6 Should the Contractor cause damage to the work or property of any separate contractor and/or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, park commissioners, employees and agents, to the full extent as agreed to under Section 3.18 of these General Conditions.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 CHANGE ORDERS

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

- .1 The change in the Work;



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

Methods used in determining adjustments to the Contract sum may include those listed in Section 7.3.3.

Notwithstanding any provision to the contrary in the Contract Documents, the overhead and profit for Contractor and Subcontractors on any Change Order or Construction Change Directive shall be determined as specified in Section 4.5 of the Agreement.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

*(Paragraph deleted)*

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

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect and Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits

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covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

**§ 7.3.11** No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a 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.

#### **§ 7.4 MINOR CHANGES IN THE WORK**

The Architect has 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 will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

#### **§ 7.5 CONTINUATION OF WORK PENDING RESOLUTION**

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.

### **ARTICLE 8 TIME**

#### **§ 8.1 DEFINITIONS**

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

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

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

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

#### **§ 8.2 PROGRESS AND COMPLETION**

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

**§ 8.2.2** The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** 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

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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 factors prevailing in this locality.

### **§ 8.3 DELAYS AND EXTENSIONS OF TIME**

**§ 8.3.1** If the Contractor is delayed at any time in the progress of the Work prior to Substantial Completion by: any wrongful act or neglect of Owner; changes ordered in the Work which are not caused by the wrongful or negligent acts, errors or omissions of Contractor, its agents, employees or Subcontractors; or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including regional labor disputes (not disputes limited to the work force of, or provided by, the Contractor or its Subcontractors) as they affect the Work that cannot be resolved by Contractor's agreeing to the wages, hours, working conditions and other terms as they have been or will be established as the pattern settlement with respect to said dispute, provided that prior to execution of the Contract by Owner, Contractor has advised Owner in writing of the expiration during the Contract Time of applicable labor contracts; fire, unusual delay in deliveries not reasonably foreseeable, unavoidable casualties, adverse weather conditions not reasonably foreseeable, unusual subsurface or concealed Site conditions which could not have been discovered in the exercise of due diligence and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the type contemplated in the Contract Documents, or by other occurrences which the Architect, subject to the Owner's approval, determines may justify delay, then, provided that the Contractor is in compliance with all other relevant provisions of the Contract Documents, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence as determined by the Architect and approved by the Contractor and Owner; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** Extension of time provided for the completion of the Work shall be the Contractor's sole remedy for delay (except for the Contractor's right to terminate the Contract pursuant to the provisions of Article 14 hereof), unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the Work and where to the extent that such acts of the Owner continue after Contractor's written notice to Owner of such interference. The Owner's exercise of any of its rights under the Contract, including, without limitation, its rights under Article 7, 'Changes in the Work,' regardless of the extent or number of such Changes, or the Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

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

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, 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 and prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by

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such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Until Final Completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. No interest will be paid on retention amounts. Provided, however, that after the Work is seventy percent (70%) complete, Owner may, without reduction of previous retainage, determine to pay Contractor remaining progress payments for each work category in full.

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

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§9.3.1.3** The following forms must be used for pay requests: (1) AIA Application & Certificate for Payment (G702 & G703); and (2) a Sworn Statement from Contractor and Subcontractor to Owner.

**§9.3.1.4** When the contract work has been awarded on a unit price bid basis, the form of each application shall follow the Bid Proposal Form, listing each item number, the total quantity of units completed to date of the estimate, the unit price and subtotal. The subtotal column shall be added to show the total cost of work completed to date, less ten (10%) percent to be withheld giving the total amount requested for payment. Previous applications for payment paid by the Owner shall be shown on each subsequent request and subtracted after the ten (10%) percent has been withheld.

**§ 9.3.1.5** 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.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** 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 a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, and not Contractor, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality 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 and not 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

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(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.

**§9.4.3** All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanics Lien Act (770 ILCS 60/0.01 *et seq.*) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and material suppliers; amounts paid and remaining to be paid to each; lien waivers in a form acceptable to Owner; together with all other documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

## **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

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

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

**§9.5.4** No interest will be paid on payments withheld.

## **§ 9.6 PROGRESS PAYMENTS**

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

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

§ 9.6.8 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 statements, affidavits and waivers of lien).

#### § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a recommendation for a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner either does not reject the Architect's recommendations for the Certificate of Payment or does not pay the Contractor within 10 days after the date established in the Contract Documents the amount accepted for payment by the Owner, then the Contractor may, upon seven additional days' written notice to the Owner and Architect stop the Work. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs incurred of shutdown, and start-up, plus interest as provided for in the Contract Documents.

#### § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect..

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

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

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 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 find 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 stating that to the best of 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 to Owner and not Contractor, that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner's failure to object to and Owner's acceptance of Architect's findings hereunder shall not limit Architect's obligation to properly perform his duties under the Contract Documents and shall not constitute Owner's acceptance of Work not complying with the requirements of the Contract Documents or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond

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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 all costs and reasonable attorneys' fees.

§ 9.10.3 The 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.

§ 9.10.4

*(Paragraphs deleted)*

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.

*(Paragraph deleted)*

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

**§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor 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.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall be responsible for security of all tools, materials, and equipment left on site.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

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

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accidents shall hold regularly scheduled meetings with representatives of Subcontractors, and in the event of separate contracts, hold meetings with other contractors, to promote compliance with governing safety regulations.

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

**§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

**§ 10.3 HAZARDOUS MATERIALS**

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

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

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

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

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

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

#### § 10.4 EMERGENCIES

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

#### ARTICLE 11 INSURANCE AND BONDS

*(Paragraphs deleted)*

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**§11.1 CONTRACTOR'S INSURANCE REQUIREMENTS.** Contractor shall procure and maintain for the duration of the contract, insurance against claims for death, injuries, sickness to persons, or damages to property which may arise from or in connection with the performance of work hereunder by the Contractor, his agents, representatives, employees or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, of the types and in the amounts listed below.

**§11.1.1 Commercial General and Umbrella Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner, its elected and appointed officials, employees, agents and volunteers, and Architect shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner and Architect. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

**§11.1.2 Continuing Completed Operations Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work. Continuing CGL insurance shall be written on ISO occurrence form CG 00 01, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**§11.1.3 Business Auto and Umbrella Liability Insurance.** Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**§11.1.4 Workers Compensation Insurance.** Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

**§11.1.5 Contractor's Obligation to Insure for Bodily Injury Claims.** In addition to the above, the Owner will require all Contractor's to purchase insurance to cover claims and expenses asserted against Architect, its employees and consultants for bodily injury, sickness, disease, or death cause by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

#### **§11.1.6 General Insurance Provisions**

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.1 Evidence of Insurance Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner's written request for said copies.

.2 Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Bests Key Rating Guide. If the Bests rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

.3 Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

.5 Subcontractors. Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## **§11.2 PERFORMANCE AND PAYMENT BONDS**

**§ 11.2.1** The Contractor shall deposit with the Owner before commencing any Work an *AIA A312-2010 Performance Bond and Payment Bond* for 110% of the Contract Sum, guaranteeing the faithful performance of the work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, payment of the prevailing wage in accordance with paragraph 13.8.1, and guarantee correction of work. The Surety must be approved by the Owner, and be licensed to conduct business in the State of Illinois and be named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury.

**§ 11.2.2** The Contractor and all subcontractors shall name the Owner as an obligee on all bonds.

## **§ 11.3 PROPERTY INSURANCE**

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



§ 11.3.1.1 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. Owner shall not be required to provide coverage for other perils 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.

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

§ 11.3.1.3 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.

§ 11.3.1.4 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.

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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.

*(Paragraphs deleted)*

§ 11.3.4 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.

*(Paragraphs deleted)*

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

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

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§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Architect, with the consent of the Owner, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. During the applicable period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Notwithstanding the foregoing, Contractor shall correct Work deficiently or defectively performed, and replace defective or nonconforming materials, even though such deficiency, defect or nonconformity may be discovered more than one year after final completion, if the correction is of a latent defect and arises from poor workmanship or improper materials or is required to be made to workmanship or materials covered by Contractor or Subcontractors contrary to the Architect's request or to requirements specifically expressed in the Contract Documents and was therefore not visible for inspection by Architect or Owner at the time the Work was performed.

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

*(Paragraph deleted)*

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

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

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

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

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## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. This Contract is nonassignable in whole or in part by Contractor, and an assignment shall be void without the prior written consent of Owner, which consent, shall not be unreasonably withheld.

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

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect 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 their cost to the Contractor.

§ 13.5.2 If the Owner, Architect, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner or Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.5.7 Retests. The cost of a retest will be borne by the party requesting the retest, unless the retest shows that the original test or the Work being tested was in error or defective, and in such event, the cost of the retest shall be borne by the other party.

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the legal rate established in the Illinois Local Governmental Prompt Payment Act.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

#### § 13.8. COMPLIANCE WITH LAWS

Contractor shall abide by and comply with all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.

§ 13.8.1 As a condition of the award of the Contract to contractor, Contractor shall certify, affirm and agree as follows, which certifications, affirmations and agreements shall be incorporated in and hereunder as a part of the Contract:

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

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor, regardless of the rates contained in the Contract Documents. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. Current prevailing wage rates are published at the following website: <https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/2017-Rates.aspx>. The Contractor agrees to indemnify and hold harmless the Owner 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 five (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

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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 Owner with each monthly pay request in the form attached to the Contract Documents. The certified payroll shall be accompanied by a statement signed by the Contractor or subcontractor which states that: (i) he or she has examined the certified payroll and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. The Contractor may rely on the certification of a lower tier subcontractor, provided the Contractor does not knowingly rely upon a subcontractor's false certification. The records submitted in accordance with this payroll submittal provision shall be considered public records pursuant to Section 5 of the Prevailing Wage Act, 820 ILCS 130/5 (2004, as amended by P.A. 94-515). The Owner may, at its option, immediately terminate the Contract in the event that Contractor violates any provision of this paragraph or the Prevailing Wage Act.

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

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

.2 To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.

.3 Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

.4 Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.

.5 Contractor shall abide by the "Employment of Illinois Workers on Public Works Act" (30 ILCS 570/0.01 et. seq.) which stipulates that whenever there is a period of excessive unemployment in Illinois, defined as any month immediately following two (2) consecutive calendar months during which the level of unemployment in Illinois exceeds five percent (5%) as measured by the U.S. Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Contractor shall employ only Illinois laborers unless otherwise exempted as so stated in the Act. ("Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident). Other laborers may be used if Illinois laborers are not available or are incapable of performing the particular type of work involved if so certified by the Contractor and approved by the Architect.

.6 (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; and (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor.

.7 Contractor knows and understands the Equal Employment Opportunity Clause administrated by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

.8 Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

.9 Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A. misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.

.10 If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.

.11 The Contractor shall cause all Subcontractors to comply with the requirements and provisions of the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 *et seq.*) (the "Act") by:

a. Prohibiting the use, possession, distribution or delivery of any drug or alcohol (as defined under the Act) or allowing any employee to be under the influence of any said drug or alcohol while performing the Work;

b. Filing a written substance abuse prevention program with the Owner for the prevention of substance abuse among its employees prior to the commencement of the Work. Said program shall be available to the general public and, at a minimum, contain the following:

i A minimum requirement of a 9 panel urine drug test plus a test for alcohol. Testing an employee's blood may only be used for post-accident testing, however, blood testing is not mandatory for the employer where a urine test is sufficient;

ii. A prohibition against the actions for the use, possession, distribution or delivery of any drug or alcohol (as defined under the Act) or any employee under the influence of any said drug or alcohol while performing the Work;

iii. A requirement that employees performing the Work submit to pre-hire, random, reasonable suspicion, and post-accident drug and alcohol testing. Testing of an employee before commencement of the Work is not required if the employee participated in a random testing program during the ninety (90) days preceding the date on which the employee commenced work hereunder; and

iv. A procedure for notifying an employee that he or she may not perform any of the Work if he or she: 1) uses, possess, delivers or is under the influence of a drug or alcohol as prohibited under the Act; 2) tests positive for the presence of a drug as outlined in the Act; or 3) refuses to submit to drug or alcohol testing as required under the

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Contractor's substance abuse program until the employee tests negative for the presence of drugs or alcohol as outlined in the Act or has been approved to commence or return to work in accordance with the Contractor's substance abuse program.

c. Immediately removing and/or prohibiting access to the Work site of any employee who: 1) uses, possess, delivers or is under the influence of a drug or alcohol as prohibited under the Act; 2) tests positive for the presence of a drug as outlined in the Act; or 3) refuses to submit to drug or alcohol testing as required under the Contractor's substance abuse program. Said employee shall be prohibited from the Work site until he or she tests negative for the presence of drugs or alcohol as outlined in the Act or has been approved to commence or return to work in accordance with the Contractor's substance abuse program; and

d. Complying with all other requirements of the Act.

.12 The Contractor hereby acknowledges that pursuant to 5 ILCS 140/7(2) any record of the Contractor that relates directly to a governmental function being performed by the Contractor pursuant to this Agreement is considered a public record of the Owner for purposes of the Freedom of Information Act (FOIA), and upon request of the Owner's FOIA Officer, Contractor shall within two (2) business days turn over to the FOIA Officer any record requested that is in possession of the Contractor.

**§ 13.8.2** Contractor and any subcontractor shall keep and maintain accurate books of record and account, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Contract, and all papers, files, accounts, reports, cost proposals with backup data and all other material relating to work under this Contract and shall make all such materials available at the office of the Owner at any reasonable time during the term of this contract and for the length of time established by law or five (5) years, whichever is longer from the date of final payment to Contractor or termination of this Contract for audit, inspection and copying upon Owner's request.

**§ 13.8.3** The Contractor shall be required to remain for the entirety of the Contract in compliance with the foregoing legal requirements. A violation is grounds for the immediate termination of the Contractor for cause. However, any forbearance in delay by the Owner in terminating Contractor or canceling the Contract shall not constitute a waiver of any right the Owner may have, including without limitation termination of Contractor, cancellation of the Contract and recovery of damages.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 TERMINATION BY THE CONTRACTOR**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or 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, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or 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, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed,

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

## § 14.2 TERMINATION BY THE OWNER FOR CAUSE

### § 14.2.1

*(Paragraphs deleted)*

If the Contractor shall institute proceedings or consent to proceedings 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 said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee, or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if 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 mechanic's or materialman's lien or a notice of lien is filed against any part of the Project and is not promptly bonded or insured over by the Contractor in a manner reasonably satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the 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 employment of the Contractor, and take possession of the Project and of 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 his equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in the event of the Contractor's failure to so, the Owner shall have the right to remove or store, or remove and store, such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination until final completion of the Work

### § 14.2.2 When

*(Paragraphs deleted)*

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

§ 14.2.3 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

*(Paragraph deleted)*

§14.2.4 The Owner's right to terminate the Contract pursuant to Section 14.2 shall be in addition to and not in limitation of its right to stop the Work without terminating the Contract pursuant to Section 2.3.

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### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A "Claim" is a written demand or assertion by the Contractor seeking adjustment to interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms arising out of the Contract.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner with a copy sent to the Architect. Claims by Contractor must be initiated within 15 days after occurrence of the event giving rise to such Claim or within 15 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Contractor's Claim, the Contractor shall proceed diligently with the performance required of him under the Contract.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.5.3 **Unit Prices.** The Contractor shall be responsible for notifying the Owner of any discrepancies or additions to work items completed on a unit price basis. This notification must take place prior to the execution of the Work.

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The purpose of this requirement is to make sure the Owner is aware of the extra items affecting the cost of the original contract amount. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the corrected sum thereof will be resolved in favor of the corrected sum.

#### **§ 15.1.6 CLAIMS**

The Contractor waives Claims against the Owner for consequential damages arising out of or relating to this Contract. This

*(Paragraphs deleted)*

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 14.

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.

*(Paragraphs deleted)*

#### **§15.1.7 RESOLUTION OF DISPUTES**

**§15.1.7.1 Venue.** Any suit or action arising under this Contract shall be commenced in DuPage County, Illinois, but only after exhausting all possible administrative remedies.

**§15.1.7.2 Limitations On Contractor's Claims.** No suit or action shall be maintained by Contractor, its successors or assigns, against Owner on any claim based upon or arising out of this Contract or out of anything done in connection with this Contract unless such action shall be commenced within one year of the termination of this Contract.

**§15.1.7.3 Waiver of Punitive Damages.** The Contractor and Owner waive all claims against each other for all punitive damages arising out of or relating to this Contract, but nothing in this paragraph shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

# Additions and Deletions Report for AIA® Document A201™ – 2007

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

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## PAGE 1

Arrowhead Golf Clubhouse Exterior Stair and Sidewalk Improvements Project  
26W151 Butterfield Road  
Wheaton, IL 60189

...

Wheaton Park District  
102 E. Wesley  
Wheaton, IL 60187

...

*(Name, legal status and address)*  
Williams Architects  
500 Park Boulevard, Ste. 800  
Itasca, IL 60143

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, Agreement, Advertisement for Bids, Invitation & Instructions to Bidders, Conditions (General, Supplementary and Special Supplementary), Proposal, Surety Bond, Performance Bond, Labor and Material Payment Bond, Plans, Drawings, Specifications, Addenda, Bulletins, Supplemental Plans, Supplemental Specifications, and Standards & Specifications pursuant to Paragraph 1.5.4 below, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract approved by the Owner and signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~

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The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a ~~Sub-subcontractor~~, Sub-subcontractor provided, however, Owner shall be a third party beneficiary of any Subcontract agreement under the circumstances set forth in Article 5 herein, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

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#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§1.1.7 "As selected", or "as approved", or "satisfactory to", or "as required", or "as directed" mean as selected, approved, required or directed by the Owner or by the Architect acting for the Owner, unless otherwise specified in the specific provision in which the term is used.

§1.1.8 "Final Completion" means the date the Contract has been fully performed, all the Work has been completed and a final Certificate for Payment approved by the Owner has been issued by the Architect.

§1.1.9 "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.

§1.1.10 "Or equal", "approved equal", or "equal to" mean that the determination whether an alternative product or system is equal to that indicated or specified shall be made by the Owner.

§1.1.11 "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, fully tested 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 wherever the direction "provide" is used.

§1.1.12 "Punch List Items" shall mean and shall be limited to uncompleted items of the 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.

§1.1.13 "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 and Architect as such, subject only to minor Punch List Items which do not affect full use and enjoyment," and the Contractor has completed all Work necessary in order for the Owner to receive all required occupancy permits.

#### **§ 1.1.14 THE PROJECT MANUAL**

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work "indicated" in or from the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them by all. By its execution of the Contract, the Contractor shall represents, acknowledges and agrees that any differences between the requirements of the Drawings and the Specifications or any differences noted within the Drawings themselves or within the Specifications themselves or any conflicts between the Contract Documents and applicable standards, codes and ordinances, have been referred to the Owner and Architect by Contractor prior to submission of bids and have been clarified by an Addendum issued to all bidders.



If any such differences or conflicts were not called to the Owner's and Architect's attention prior to submission of bids, the Architect shall decide which of the conflicting requirements will govern based upon the most stringent or highest quality of the requirements, and, subject to the approval of the Owner, the Contractor shall perform the Work at no additional cost and/or time to the Owner in accordance with the Architect's decision. Work not indicated in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the indicated results-intended results.

Large scale drawings shall take precedence over small scale drawings; figured dimensions on drawings over scaled dimensions and noted material over graphic representations.

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§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Unless specifically stated as an obligation of the Owner, it is understood to be an obligation of the Contractor.

§1.2.4 All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Architect and Owner.

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#### **§ 1.4 INTERPRETATION**

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

##### **§ 1.4.1 INTERPRETATION**

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##### **§ 1.4.2 HEADINGS.**

The headings for each paragraph of the Contract Documents are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of the Contract Documents nor in any way affect the Contract Documents.

#### **§ 1.5**

##### **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER PROJECT DOCUMENTS**

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service. Contract Documents are owned and copyrighted by the Owner. No Contractor, Subcontractor or Materialman shall retain or claim ownership or copyright of Contract Documents. No Contractor, Subcontractor or Materialman shall use any Contract Document for another project. All Contractors and Subcontractors have a limited license to reproduce portions of Contract Documents for this project, which cannot be obtained from Architect or Owner.

The Architect and Owner shall be deemed the owners of the Project Documents, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service-Project Documents. 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' Architect or Owner's reserved rights.

§ 1.5.2 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. Contractor hereby specifically acknowledges and declares, and the execution of the Contract by the Contractor is a representation of the Contractor that the Contract Documents are full and complete, are sufficient to have enabled the Contractor to determine the cost of the Work and that the Contract Documents are sufficient to enable it to construct the Work outlined therein, in accordance with applicable laws and regulations, and otherwise to fulfill all its obligations hereunder, 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 Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the site, examined all physical and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the site, including, without limitation, surface conditions of the site and subsurface conditions readily observable or ascertainable upon the exercise reasonable diligence and 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; (2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it has an obligation to and will promptly notify Owner and Architect of such fact, and will not proceed until it shall have received the written interpretation of Owner or Architect.

Claims for additional compensation or extensions of time because of the failure of the Contractor to familiarize himself with the conditions enumerated in the Contract Documents and other conditions of the site which might affect the Work, or because of the failure of the Contractor to obtain a needed interpretation before proceeding with the Work, will not be allowed.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization~~ authorization, excluding matters requiring approval by the Board of Park Commissioners or the Executive Director. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**Decision of the Owner.** All work done under this Contract shall be done to the satisfaction of the Owner who shall in all cases determine the amount of work done which is to be paid for under this Contract. The Owner shall decide all

questions that may arise as to the measurements of quantities and the fulfillment of this Contract on the part of the Contractor, and shall determine all questions concerning the true intent or meaning of the Plans and Specifications and his determination and decision shall be final and conclusive.

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**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.~~ furnishing of surveys by the Owner is not a guarantee of the accuracy of the information contained therein, and shall not relieve the Contractor from its duties under the Contract Documents in general. The submission of a bid for the work implies that the Contractor had examined the site, taking into consideration all such conditions that may affect the work, regardless of the information contained in the surveys.

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

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If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 ~~or repeatedly fails to carry out 12.2, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time or fails to remove and discharge (within ten days) any lien filed upon Owner's funds by anyone claiming by, through, or under Contractor, or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, or fails to carry out any portion of the Work in accordance with the Contract Documents, or in the event an emergency arises that requires the Work to be stopped, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; eliminated or the emergency no longer exists;~~ however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Owner and Architect shall at all times have access to the Project Site for purposes of inspection whenever the Work is in preparation and progress.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven-day 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 2.3 thereof,~~ the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the ~~reasonable-actual~~ cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

#### **§2.5 OWNER'S REMEDIES NOT EXCLUSIVE**

The rights and remedies of Owner stated in this Article 2 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

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It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner



desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. High quality craftsmanship will be expected in all phases of work. Any elements found unacceptable and not in compliance with the Contract Documents will be removed and replaced by the Contractor until satisfactory results are obtained.

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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, ~~become generally familiar with~~ evaluated the local conditions under which the Work is to be performed ~~and correlated personal observations and~~, except for concealed conditions or those unknown to Contractor, found the site suitable for completing the Work in compliance with requirements of the Contract Documents. Furthermore, execution of the Contract by the Contractor is a representation that the Contract Documents include the construction details, means, methods, procedures and techniques necessary to perform the Work.

Before submitting its bid proposal the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner pursuant to Section 2.2.2 and shall at once report to the Architect and Owner errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents that could not have been discovered by a reasonably diligent contractor experienced in performance of the type of work of the Work of this Project in advance of performance and that are not of the nature of items described in and intended to be covered in Sections 1.2.1 and 1.5.2 hereof, unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner and Architect. If the Contractor performs any construction activity involving an error, inconsistency or omission in the Contract Documents that the Contractor recognized or reasonably should have recognized and of which Contractor failed to notify the Owner and Architect, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

§3.2.1.1. If any errors, inconsistencies, or omissions in Contract Documents are recognized or reasonably should have been recognized by the Contractor, any employee or agent of the Contractor, or any of its Subcontractors, the Contractor shall be responsible for notifying the Owner and Architect in writing of such error, inconsistency, or omission before proceeding with the Work. The Architect will take such notice under advisement and within a reasonable time commensurate with job progress render an interpretation. The Architect's interpretation shall be subject to Owner's approval. If the Contractor fails to give such notice and proceeds with such Work, it shall correct any errors, inconsistencies, or omissions at no additional cost to the Owner.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall ~~observe~~ evaluate any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; Documents, except to the extent that such errors, omissions or inconsistencies affect Contractor's services; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor ~~as a request for information in such form as the Architect may require.~~ It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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§ 3.2.4 If the Contractor ~~believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3,~~ the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided avoided, including any increases in construction costs, if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field



~~measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner and Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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§3.3.4 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.

§3.3.5 The Contractor shall establish and maintain bench marks and all other grades, lines and levels necessary for the Work, report errors or inconsistencies to the Owner and Architect before commencing Work, and review the placement of the building(s) and permanent facilities on the site with the Owner and Architect after all lines are staked out and before foundation Work is started. The Contractor shall provide access to the Work for the Owner, Architect, other persons designated by Owner, and governmental inspectors. Any encroachments made by the Contractor or its Subcontractors (of any tier) on adjacent properties due to construction as revealed by an improvement survey, except for encroachments arising from errors or omissions not reasonably discoverable by the Contractor in the Contract Documents shall be the sole responsibility of the Contractor, and the Contractor shall correct such encroachments within thirty (30) days of the improvement survey (or as soon thereafter as reasonably possible), at the Contractor's sole cost and expense, either by the removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachments to remain.

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§ 3.4.2 ~~Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions. The Contractor may make substitutions 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 Change Order or Construction Change Directive.~~

§ 3.4.3 ~~The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Except as provided in 3.4.2, the materials specified have been determined to have characteristics appropriate for the purposes of this Project. No work will be acceptable which utilizes an alternate not approved during the bidding process.~~

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

§3.4.5 Before ordering any material or doing any Work, the Contractor shall verify all measurements at the Project Site and he 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.

§3.4.6 The Contractor shall carefully inspect all materials delivered on and to the Project Site and reject defective materials without waiting for the Architect or other representative of Owner to observe the materials.

§3.4.7 Contractor shall maintain harmonious labor relations on the job site. If a labor problem arises or 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.

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The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. §3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit.

The warranty will not be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedures and advises the Architect and Owner of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, or improper operation. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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 Architect upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in these Supplementary Conditions, elsewhere in the Contract Documents, or in any Certificate of Substantial Completion approved by Owner and Contractor and/or Subcontractor, as applicable, all warranties shall become effective on the date of Final Completion of the entire Work, and shall run for a 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.

§3.5.2.1 If materials or equipment are replaced during the original warranty period, a new warranty period thereon shall then begin from the date that such corrective action is completed and approved.

§3.5.2.2 For concrete work, warranty protection for a repaired item shall be for twenty-four months after final acceptance of concrete work or the length of the original warranty period, whichever is longer. This will cover structural failures, as well as surface erosion due to spalling caused by frost popping soft aggregates within the concrete and surface erosion due to faulty workmanship. All concrete work not meeting high industry standards will be removed and replaced at no charge to the Owner.

§3.5.2.3 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.

§3.5.2.4 Correction of defective or non-conforming Work shall include, in addition to that described in Article 12, any damage to the Project or other property that may result from such defective or nonconforming Work or from such corrective action, including without limitation any damage to any contents, to the work of other contractors, or to adjacent property.

§3.5.2.5 The Contractor shall furnish maintenance and twenty-four (24) hour callback service for the equipment provided by Contractor, Subcontractor or supplier for a period of at least six (6) months after Final Completion and acceptance of the Work, or for such longer period as shall otherwise be provided in any of the Contract Documents. This service shall include regular examinations of the installation by competent and trained employees of the Contractor, or manufacturer, and shall include all necessary adjustments, greasing, oiling, cleaning, supplies and parts to keep the equipment in proper operation except such parts made necessary by misuse, accidents or negligence not caused by the Contractor or any of its Subcontractors.

§3.5.2.6 The warranty provided in this Paragraph 3.5 shall be in addition to and not in limitation of, any other warranty or remedy required under the Contract Documents or under applicable law.

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The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Illinois State sales tax is not applicable to the Project with respect to materials, equipment and supplies incorporated in the Work or totally consumed in the performance of the Work. The Contractor shall pay unemployment and Social Security taxes and other taxes imposed by local, city, state or federal government with respect to Contractor's own personnel and certify to Owner that this has been done before payment is made to the Contractor.

### § 3.7

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded except as indicated in 2.2.2 herein.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. laws, ordinances, codes, rules, regulations and lawful orders of public authorities having jurisdiction over all or any part of the Work or any insurance organizations (collectively, "Legal Requirements") relating to the Work of the performance thereof. If the Contractor fails to give any such notice or to permit any inspection, it shall be responsible for and shall indemnify and hold harmless, the Owner, the Architect and their respective consultants, employees, officers and agents against and from any resulting Work delays, fines, penalties, judgments or damages, including without limitation reasonable attorneys' fees and court costs imposed on, or suffered, sustained or incurred by, any of the parties indemnified hereunder. The Contractor shall also be liable to the Owner for any delay in the performance of the Work or increase in the cost of the Work resulting from the Contractor's failure to fully comply with the provisions of this Subparagraph 3.7.2. If the Contractor performs Work that it knows or reasonably should have known would be contrary to Legal Requirements, without such notice to the Architect and the Owner, the Contractor shall assume full responsibility for such Work and delays and shall bear the attributable costs.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or



(2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.2.1 If the Contractor observes that portions of the Contract Documents are at variance with Legal Requirements, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.2.2 Copies of any and all permits, licenses and certificates shall be delivered to the Architect and Owner as soon as they are obtained. The Contractor shall deliver the originals of such permits, licenses and certificates to the Architect together with the Contractor's application for final payment.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and the Contract Sum or time for performance of the Work shall not be adjusted. If either party disputes this determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.6 Contractor shall comply with all public and private utility requirements relating to the Work or the performance thereof. If the Contractor performs Work contrary to applicable utility requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

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- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

- .3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...



§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor's competent superintendent shall have the knowledge and control of all work under this Contract and shall communicate directly to the Owner upon request.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the and~~ Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect or Owner requires additional time to review. Failure of the Architect to reply within the 14 day ~~period-period, or any extension of said time period,~~ shall constitute notice of no reasonable objection.

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

...

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's and Owner's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

...

**§ 3.10.4 Construction Engineering Check.** The Contractor shall notify the Owner three (3) business days in advance of all grading, drainage, and other major items of construction for field checking of construction engineering. All questions pertaining to the Plans, Specifications and details of the work shall be directed to the Owner and cleared prior to construction.

**§ 3.10.5 Contractor's Construction Schedule.** The Contractor shall provide regular monitoring and updating of the Progress Schedule with monthly Update Reports submitted contemporaneously with the monthly pay application, or more frequently as required by the conditions of the Work. The update report shall indicate progress achieved and activities commenced or completed within the last month.

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner and the Architect in writing of such deviation at the time of submittal and (1) ~~the Architect has Owner and Architect~~ have given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of

responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's or Architect's approval thereof.

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**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner will and the Architect will shall specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner and Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the ~~Owner and Architect have~~ Architect has specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the ~~limited purpose~~ of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment

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

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

**§ 3.13.4 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 the existing asphalt.

**§ 3.13.5 Fencing.** The Contractor will be responsible for erecting and maintaining all construction fencing required by applicable law, regulation, rule, ordinance or code at all times of construction. Failure to erect or maintain this fencing will result in the correction of the problem by the Owner 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. Required fencing 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 Specifications and as required by applicable law. specification.

§ 3.13.6 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.

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§3.15.3 The Contractor shall walk the site at the close of every work day to assure it is either free of waste material and rubbish, or the waste material and rubbish is secured in a container that is inaccessible to park patrons.

...

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

...

§ 3.18.1 To the fullest extent permitted by law ~~the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against law, the Contractor shall waive all right of contribution 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 attorneys' fees, legal fees (attorney's and paralegals fees and court costs), arising out of or resulting from the performance of the Work, Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a property, other than the work itself, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they any of them may be liable, regardless of whether or not such claim, damage, loss or expense it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18 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.~~

In any and all claims against the Owner or the Architect or any of their agents or employees and consultants by any employee of any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

"Claims," "damages," "losses" and "expenses" as these words are used in this Agreement shall be construed to include, but not limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment or other mechanical or structural contrivance erected or constructed by any person, or any or all other kinds of equipment whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained herein; (3) (3) all costs and expenses incurred by the indemnified party and (4) error or omission or defect in any submission made to Architect / Architect for its approval or review.



§ 3.18.3 The indemnification obligations of the Contractor under this Contract are limited only to the extent required under the Construction Contract Indemnification for Negligence Act (740 ILCS 35/0.01 et seq.).

...

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

...

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

§ 4.2.2 The Architect as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, ~~to become generally familiar with to~~ supervise and to keep the Owner informed about the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work ~~observed~~ is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other ~~through the Architect~~ about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's observations and evaluations of the progress and quality of Work and Contractor's Applications for Payment, the Architect will review ~~and-and~~ after consultation with Owner, certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner and the Architect considers it necessary or advisable, ~~the Architect will have authority the Owner or the Architect will have the responsibility and authority,~~ subject to Owner's approval, to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner or the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner or the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the ~~Architect-Owner~~ or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for



installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Owner and Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All Change Orders, Construction Change Directives, and field directives shall require the written approval of Owner in order to be binding on Owner.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and ~~records, approval,~~ written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

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

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

...

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14-30 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect or Owner requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period-30 day period or any extension thereof shall constitute notice of no reasonable objection.

...

**§5.2.5** In the event of a conflict between the Owner and Architect regarding the selection of Subcontractors, the Owner's decision shall govern.

By appropriate ~~agreement, written where legally required for validity, written agreement,~~ the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, 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 the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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

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

~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract. All subcontract agreements shall conform to the requirements of the Contract Documents and the Contractor hereby assigns to Owner (and Owner's permitted assigns) all its interest in any subcontract agreements and purchase orders now existing or hereinafter entered into by 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 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. Upon such acceptance by Owner, (1) the Contractor shall promptly furnish to the Owner true and correct copies of the designated subcontract agreements and purchase orders, 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 Owner's acceptance of the subcontract agreement(s) or purchase order(s) shall constitute a debt between such parties and the Contractor. It is further agreed that no subcontract agreement or purchase order shall contain any restriction that would prohibit assignment under the terms and conditions stated hereinabove. It is further agreed and understood that such assignment is part of the consideration to Owner for entering into the Contract with the Contractor and may not be withdrawn prior to Final Completion.~~

...

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

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

...

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor ~~wrongfully~~ causes to completed or partially completed construction or to property of the ~~Owner or Owner~~, separate contractors as provided in Section 10.2.5.

...

§6.2.6 Should the Contractor cause damage to the work or property of any separate contractor and/or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, its officers, park commissioners, employees and agents, to the full extent as agreed to under Section 3.18 of these General Conditions.

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

...

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

...

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

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- 3 The extent of the adjustment, if any, in the Contract Time.

Methods used in determining adjustments to the Contract sum may include those listed in Section 7.3.3. Notwithstanding any provision to the contrary in the Contract Documents, the overhead and profit for Contractor and Subcontractors on any Change Order or Construction Change Directive shall be determined as specified in Section 4.5 of the Agreement.

...

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

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

...

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect and Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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§7.3.11 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or a 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.

...

#### **§7.5 CONTINUATION OF WORK PENDING RESOLUTION**

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.

...

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

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, 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 factors prevailing in this locality.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then progress of the Work prior to Substantial Completion by: any wrongful act or neglect of Owner; changes ordered in the Work which are not caused by the wrongful or negligent acts, errors or omissions of Contractor, its agents, employees or Subcontractors; or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including regional labor disputes (not disputes limited to the work force of, or provided by, the Contractor or its Subcontractors) as they affect the Work that cannot be resolved by Contractor's agreeing to the wages, hours, working conditions and other terms as they have been or will be established as the pattern settlement with respect to said dispute, provided that prior to execution of the Contract by Owner, Contractor has advised Owner in writing of the expiration during the Contract Time of applicable labor contracts; fire, unusual delay in deliveries not reasonably foreseeable, unavoidable casualties, adverse weather conditions not reasonably foreseeable, unusual subsurface or concealed Site conditions which could not have been discovered in the exercise of due diligence and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the type contemplated in the Contract Documents, or by other occurrences which the Architect, subject to the Owner's approval, determines may justify delay, then, provided that the Contractor is in compliance with all other relevant provisions of the Contract Documents, the Contract Time shall be extended by

Change Order for such reasonable time as the Architect may determine, or Construction Change Directive for the length of time actually and directly caused by such occurrence as determined by the Architect and approved by the Contractor and Owner; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Extension of time provided for the completion of the Work shall be the Contractor's sole remedy for delay (except for the Contractor's right to terminate the Contract pursuant to the provisions of Article 14 hereof), unless the same shall have been caused by acts constituting intentional interference by Owner with Contractor's performance of the Work and where to the extent that such acts of the Owner continue after Contractor's written notice to Owner of such interference. The Owner's exercise of any of its rights under the Contract, including, without limitation, its rights under Article 7, 'Changes in the Work,' regardless of the extent or number of such Changes, or the Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

...

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

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Until Final Completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. No interest will be paid on retention amounts. Provided, however, that after the Work is seventy percent (70%) complete, Owner may, without reduction of previous retainage, determine to pay Contractor remaining progress payments for each work category in full.

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§9.3.1.3 The following forms must be used for pay requests: (1) AIA Application & Certificate for Payment (G702 & G703); and (2) a Sworn Statement from Contractor and Subcontractor to Owner.

§9.3.1.4 When the contract work has been awarded on a unit price bid basis, the form of each application shall follow the Bid Proposal Form, listing each item number, the total quantity of units completed to date of the estimate, the unit price and subtotal. The subtotal column shall be added to show the total cost of work completed to date, less ten (10%) percent to be withheld giving the total amount requested for payment. Previous applications for payment paid by the Owner shall be shown on each subsequent request and subtracted after the ten (10%) percent has been withheld.

§ 9.3.1.5 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.

...

§ 9.4.1 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 a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, and not Contractor, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality 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 and not 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.

§9.4.3 All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanics Lien Act (770 ILCS 60/0.01 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and material suppliers; amounts paid and remaining to be paid to each; lien waivers in a form acceptable to Owner; together with all other documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.

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

...

§9.5.4 No interest will be paid on payments withheld.

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

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§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. ~~Neither the Owner nor Architect shall~~ The Owner shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

...



§9.6.8 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 statements, affidavits and waivers of lien).

If the Architect does not issue a recommendation for a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner either does not reject the Architect's recommendations for the Certificate of Payment or does not pay the Contractor within seven-10 days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, accepted for payment by the Owner, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. Architect stop the Work. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay incurred of shutdown, and start-up, plus interest as provided for in the Contract Documents.

...

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect-Architect..

...

§ 9.10.1 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-find 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 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 to Owner and not Contractor, that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Owner's failure to object to and Owner's acceptance of Architect's findings hereunder shall not limit Architect's obligation to properly perform his duties under the Contract Documents and shall not constitute Owner's acceptance of Work not complying with the requirements of the Contract Documents or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

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

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents; or~~  
~~.3 — terms of special warranties required by the Contract Documents. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.~~

~~§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or 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.~~

...

~~§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall be responsible for security of all tools, materials, and equipment left on site.~~

...

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

~~§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose wrongful acts either of them may be liable,~~

and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. The person designated as responsible for prevention of accidents shall hold regularly scheduled meetings with representatives of Subcontractors, and in the event of separate contracts, hold meetings with other contractors, to promote compliance with governing safety regulations.

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

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#### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

~~§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or 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' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~
- ~~2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~
- ~~3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~
- ~~4. Claims for damages insured by usual personal injury liability coverage;~~
- ~~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;~~
- ~~7. Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~8. Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.~~

~~§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.~~

~~§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies~~



will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.~~

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

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

**§11.1 CONTRACTOR'S INSURANCE REQUIREMENTS.** Contractor shall procure and maintain for the duration of the contract, insurance against claims for death, injuries, sickness to persons, or damages to property which may arise from or in connection with the performance of work hereunder by the Contractor, his agents, representatives, employees or subcontractors, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, of the types and in the amounts listed below.

**§11.1.1 Commercial General and Umbrella Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Owner, its elected and appointed officials, employees, agents and volunteers, and Architect shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner and Architect. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

**§11.1.2 Continuing Completed Operations Liability Insurance.** Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each occurrence for at least three years following substantial completion of the work. Continuing CGL insurance shall be written on ISO occurrence form CG 00 01, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract. Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit. Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**§11.1.3 Business Auto and Umbrella Liability Insurance.** Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**§11.1.4 Workers Compensation Insurance.** Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractors work.

**§11.1.5 Contractor's Obligation to Insure for Bodily Injury Claims.** In addition to the above, the Owner will require all Contractor's to purchase insurance to cover claims and expenses asserted against Architect, its employees and consultants for bodily injury, sickness, disease, or death cause by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

#### **§11.1.6 General Insurance Provisions**

.1 Evidence of Insurance Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. Failure to maintain the required insurance may result in termination of this Contract at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner's written request for said copies.

.2 Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Bests Key Rating Guide. If the Bests rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

.3 Cross-Liability Coverage. If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

.4 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

.5 Subcontractors. Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

## **§11.2 PERFORMANCE AND PAYMENT BONDS**

§ 11.2.1 The Contractor shall deposit with the Owner before commencing any Work an *AIA A312-2010 Performance Bond and Payment Bond* for 110% of the Contract Sum, guaranteeing the faithful performance of the work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, payment of the prevailing wage in accordance with paragraph 13.8.1, and guarantee correction of work. The Surety must be approved by the Owner, and be licensed to conduct business in the State of Illinois and be named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury.

§ 11.2.2 The Contractor and all subcontractors shall name the Owner as an obligee on all bonds.

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance ~~written on a builder's risk "all-risk" or equivalent policy form~~ in the amount of the initial Contract Sum, ~~plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without optional 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 ~~Section-Paragraph~~ 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this ~~Section-Paragraph~~ 11.3 to be covered, whichever is ~~later.~~ earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the ~~Project-Work.~~



§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) 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, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, false work, windstorm, testing and start-up, temporary buildings and debris removal, including demolition, and shall cover reasonable compensation for Architect's and Contractor's the Architect's, any of the Owner's Consultant's services and expenses required as a result of such insured loss. Owner shall not be required to provide coverage for other perils 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.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that The Contractor shall effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto. Work.

§ 11.3.1.3 If the property insurance requires deductibles, 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 such deductibles.

§ 11.3.1.4 This Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site, 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, transit and paid for by Owner.

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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, Contractor Subcontractors and Sub-subcontractors in the Work, and the Owner and the Contractor shall be named insureds.

#### **§ 11.3.3 LOSS OF USE INSURANCE**

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that

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the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

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

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

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

...

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

§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, ~~the Architect the Architect~~, with the consent of the Owner, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so ~~unless the Owner has previously given the Contractor a written acceptance of such condition so~~. The Owner shall give such notice promptly after discovery of the condition. During the ~~one year~~ applicable period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Notwithstanding the foregoing, Contractor shall correct Work deficiently or defectively performed, and replace defective or nonconforming materials, even though such deficiency, defect or nonconformity may be discovered more than one year after final completion, if the correction is of a latent defect and arises from poor workmanship or improper materials or is required to be made to workmanship or materials covered by Contractor or Subcontractors contrary to the Architect's request or to requirements specifically expressed in the Contract Documents and was therefore not visible for inspection by Architect or Owner at the time the Work was performed.

...

~~§ 12.2.2.3 The one year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

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The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. ~~Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other.~~



If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. This Contract is nonassignable in whole or in part by Contractor, and an assignment shall be void without the prior written consent of Owner, which consent, shall not be unreasonably withheld.

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect 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 their cost to the Contractor.

§ 13.5.2 If the Owner, Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner or Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

...

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

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§ 13.5.7 Retests. The cost of a retest will be borne by the party requesting the retest, unless the retest shows that the original test or the Work being tested was in error or defective, and in such event, the cost of the retest shall be borne by the other party.

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located, the legal rate established in the Illinois Local Governmental Prompt Payment Act.

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.law.

### § 13.8. COMPLIANCE WITH LAWS

Contractor shall abide by and comply with all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.

§ 13.8.1 As a condition of the award of the Contract to contractor, Contractor shall certify, affirm and agree as follows, which certifications, affirmations and agreements shall be incorporated in and hereunder as a part of the Contract:

1. The Contractor shall comply with the requirements of the Illinois Prevailing Wage Act (820

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

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor, regardless of the rates contained in the Contract Documents. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. Current prevailing wage rates are published at the following website: <https://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/2017-Rates.aspx>. The Contractor agrees to indemnify and hold harmless the Owner 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 five (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 Owner with each monthly pay request in the form attached to the Contract Documents. The certified payroll shall be accompanied by a statement signed by the Contractor or subcontractor which states that: (i) he or she has examined the certified payroll and such records are true and accurate; (ii) the hourly rate paid to each worker is not less than the general prevailing rate of hourly wages required by this Act; and (iii) the Contractor or subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class A misdemeanor. The Contractor may rely on the certification of a lower tier subcontractor, provided the Contractor does not knowingly rely upon a subcontractor's false certification. The records submitted in accordance with this payroll submittal provision shall be considered public records pursuant to Section 5 of the Prevailing Wage Act, 820 ILCS 130/5 (2004, as amended by P.A. 94-515). The Owner may, at its option, immediately terminate the Contract in the event that Contractor violates any provision of this paragraph or the Prevailing Wage Act.

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

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

.2 To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.

.3 Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

.4 Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.

.5 Contractor shall abide by the "Employment of Illinois Workers on Public Works Act" (30 ILCS 570/0.01 et. seq.) which stipulates that whenever there is a period of excessive unemployment in Illinois, defined as any month immediately following two (2) consecutive calendar months during which the level of unemployment in Illinois exceeds five percent (5%) as measured by the U.S. Bureau of Labor Statistics in its monthly publication of employment and unemployment figures, the Contractor shall employ only Illinois laborers unless otherwise exempted as so stated in the Act. ("Illinois laborer" means any person who has resided in Illinois for at least 30 days and intends to become or remain an Illinois resident). Other laborers may be used if Illinois laborers are not available or are incapable of performing the particular type of work involved if so certified by the Contractor and approved by the Architect.

.6 (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; and (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor.

.7 Contractor knows and understands the Equal Employment Opportunity Clause administrated by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

.8 Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.

.9 Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A. misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.

.10 If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.



.11 The Contractor shall cause all Subcontractors to comply with the requirements and provisions of the Illinois Substance Abuse Prevention on Public Works Projects Act (820 ILCS 265/1 et seq.) (the "Act") by:

a. Prohibiting the use, possession, distribution or delivery of any drug or alcohol (as defined under the Act) or allowing any employee to be under the influence of any said drug or alcohol while performing the Work;

b. Filing a written substance abuse prevention program with the Owner for the prevention of substance abuse among its employees prior to the commencement of the Work. Said program shall be available to the general public and, at a minimum, contain the following:

i. A minimum requirement of a 9 panel urine drug test plus a test for alcohol. Testing an employee's blood may only be used for post-accident testing, however, blood testing is not mandatory for the employer where a urine test is sufficient;

ii. A prohibition against the actions for the use, possession, distribution or delivery of any drug or alcohol (as defined under the Act) or any employee under the influence of any said drug or alcohol while performing the Work;

iii. A requirement that employees performing the Work submit to pre-hire, random, reasonable suspicion, and post-accident drug and alcohol testing. Testing of an employee before commencement of the Work is not required if the employee participated in a random testing program during the ninety (90) days preceding the date on which the employee commenced work hereunder; and

iv. A procedure for notifying an employee that he or she may not perform any of the Work if he or she: 1) uses, possess, delivers or is under the influence of a drug or alcohol as prohibited under the Act; 2) tests positive for the presence of a drug as outlined in the Act; or 3) refuses to submit to drug or alcohol testing as required under the Contractor's substance abuse program until the employee tests negative for the presence of drugs or alcohol as outlined in the Act or has been approved to commence or return to work in accordance with the Contractor's substance abuse program.

c. Immediately removing and/or prohibiting access to the Work site of any employee who: 1) uses, possess, delivers or is under the influence of a drug or alcohol as prohibited under the Act; 2) tests positive for the presence of a drug as outlined in the Act; or 3) refuses to submit to drug or alcohol testing as required under the Contractor's substance abuse program. Said employee shall be prohibited from the Work site until he or she tests negative for the presence of drugs or alcohol as outlined in the Act or has been approved to commence or return to work in accordance with the Contractor's substance abuse program; and

d. Complying with all other requirements of the Act.

.12 The Contractor hereby acknowledges that pursuant to 5 ILCS 140/7(2) any record of the Contractor that relates directly to a governmental function being performed by the Contractor pursuant to this Agreement is considered a public record of the Owner for purposes of the Freedom of Information Act (FOIA), and upon request of the Owner's FOIA Officer, Contractor shall within two (2) business days turn over to the FOIA Officer any record requested that is in possession of the Contractor.

**§ 13.8.2 Contractor and any subcontractor shall keep and maintain accurate books of record and account, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Contract, and all papers, files, accounts, reports, cost proposals with backup data and all other material relating to work under this Contract and shall make all such materials available at the office of the Owner at any reasonable time during the term of this contract and for the length of time established by law or five (5) years, whichever is longer from the date of final payment to Contractor or termination of this Contract for audit, inspection and copying upon Owner's request.**

§ 13.8.3 The Contractor shall be required to remain for the entirety of the Contract in compliance with the foregoing legal requirements. A violation is grounds for the immediate termination of the Contractor for cause. However, any forbearance in delay by the Owner in terminating Contractor or canceling the Contract shall not constitute a waiver of any right the Owner may have, including without limitation termination of Contractor, cancellation of the Contract and recovery of damages.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~90 consecutive days through no act or 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, for any of the following reasons:

...

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or Documents.

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§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner ~~and Architect,~~ terminate the Contract and recover from the Owner payment for Work executed, ~~including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~

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

...

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

- ~~.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;~~
- .2 fails to make—If the Contractor shall institute proceedings or consent to proceedings 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 said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee, or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if the Contractor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if the Contractor fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents or otherwise breaches obligations under any subcontract with a Subcontractor; or if a mechanic's or materialman's lien or a notice of lien is filed against any part of the Project and is not promptly bonded or insured over by the Contractor in a manner reasonably satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the 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 employment of the Contractor, and take possession of the Project and of 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 his equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store, or remove and store, such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination until final completion of the Work

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

- .1 — Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 — Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 — Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work. the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

~~§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

§ 14.2.4 The Owner's right to terminate the Contract pursuant to Section 14.2 shall be in addition to and not in limitation of its right to stop the Work without terminating the Contract pursuant to Section 2.3.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

...

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, "Claim" is a written demand or assertion by the Contractor seeking adjustment to interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim arising out of the Contract.

...



~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker. Owner with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 Architect. Claims by Contractor must be initiated within 15 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant 15 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.~~

...

~~Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, Contractor's Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker. the performance required of him under the Contract.~~

...

**§ 15.1.5.3 Unit Prices.** The Contractor shall be responsible for notifying the Owner of any discrepancies or additions to work items completed on a unit price basis. This notification must take place prior to the execution of the Work. The purpose of this requirement is to make sure the Owner is aware of the extra items affecting the cost of the original contract amount. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the corrected sum thereof will be resolved in favor of the corrected sum.

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

- ~~1~~ — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- ~~2~~ — 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 **except anticipated profit** arising **directly** from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to ~~either party's~~ Owner's termination in accordance with Article 14. ~~Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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.

#### **§ 15.2 INITIAL DECISION**

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. ~~The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

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

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

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

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

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

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### ~~§ 15.3~~ MEDIATION

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

~~§ 15.3.2~~ The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### ~~§ 15.4~~ ARBITRATION

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered