

CONSULTANTS:

DATE:

MARCH 24, 2025

PROJECT No.:

24-46E.1

PROJECT MANUAL

# FENCING PACKAGE

BISMARCK, MISSOURI

BISMARCK R-V SCHOOL DISTRICT

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**ADVERTISEMENT FOR BIDS**

Sealed bids will be received by Bismarck R-V School District, 165 Campus Road, Bismarck, Missouri 63624, until **Wednesday, April 9, 2025, at 10:00 a.m. DST** for **BID PACKAGE #4.1 – FENCING WORK**. Bids will be opened publicly at that time.

**Drawings and specifications for this project shall be provided by the Bismarck R-V School District, 165 Campus Drive, Bismarck, Missouri 63624, (314) 734-6111.**

Information as to bidding instructions and requirements for procuring bidding documents may be obtained from the Architect.

Not less than the prevailing hourly wage rates, as determined by the State of Missouri, Division of Labor Standards, shall be paid all workers employed on this project.

The Board of Education intends to award a contract to the lowest responsible bidder complying with the terms of the letting. However, the Board of Education reserves the right to reject any or all bids; to reject any part of a bid; to accept any bid which it deems to be in its best interest; to advertise for and solicit new bids; and, to waive any informalities or technicalities in the bid requirements and specifications.

**THERE WILL BE NO PRE-BID MEETING.**

By: Dr. Michael Silvy, Superintendent  
Bismarck R-V School District

## **SECTION 00100 - BIDDERS INFORMATION**

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### **1. PROPOSALS**

- 1.1 Bid shall be placed in opaque, sealed envelope and marked:
- BISMARCK R-V SCHOOL DISTRICT  
BID PACKAGE #4.1  
FENCING WORK**
- 1.2 All bids, mailed or otherwise delivered, shall be filed at or before the date and time designated in the Advertisement for Bids.
- 1.3 The Owner will open the bids in public session. Please refer to Section 00010 – Advertisement for Bids for detailed information on the Bid Date, Time and Location.
- 1.4 Bids may be withdrawn by written or telegraphic notice to the Owner, provided such notice is received prior to the time set for the opening of bids.
- 1.5 No oral, telephonic, electronic, or telegraphic proposals or modifications will be considered.
- 1.6 Proposals must be filed on copy or facsimile of "Form of Bid" furnished by the Owner.
- 1.7 MODIFYING STATEMENTS OF ANY KIND SHALL BE STATED SEPARATELY; THE STATEMENT MUST BE FILED IN THE SAME ENVELOPE WITH THE BID. THE OWNER RESERVES THE RIGHT TO CONSIDER SUCH STATEMENTS A SUFFICIENT CAUSE FOR REJECTING BID, AT OWNER'S SOLE AND ABSOLUTE DISCRETION.
- 1.8 The Owner reserves the privilege of extending the time of receiving bids. In the event the time is extended, all holders of bidding documents will be informed simultaneously by written instructions issued through the Owner's office.
- 1.9 **By submitting a bid, the Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time for receiving bids.**
- 1.10 Each General Contractor shall submit a Contractor's Qualification Statement as required by Appendix "C" **with the Bid Proposal**. Refer to Part 8. The Owner reserves the right to consider rejection of the bid for failure to include the required qualification statement.
- 1.11 Each General Contractor shall submit "E-Verify" Information, as required by Appendix "E" **with the Bid Proposal**. The Owner reserves the right to consider rejection of the bid for failure to include the required information.
- 1.12 By submitting a bid, the bidder agrees to include all premium time and overtime required to complete this schedule as outlined on the Form of Bid.

### **2. CONTRACTORS**

- 2.1 **All RFI's issued by the contractor or contractor's team shall have a fifteen (15) working day turn around response time from the date and time received in the Owner's office.**
- 2.2 **All RFP's issued by the contractor or contractor's team shall have a twenty-five (25) working day turn around response time from the date and time received in the Owner's office.**
- 2.3 **It is required that all contractors submit all of the project submittals within One Hundred and Fifty (150) calendar days after Notice to Proceed (including any proper extension granted by the Owner). This process will assist with expediting ordering of materials.**



### 3. EXAMINATION OF DOCUMENTS AND INSPECTION OF SITE

- 3.1 The Bidder shall carefully examine the drawings, schedules, General Conditions, and specifications and inform himself fully as to all conditions and matters which can in any way affect the work or cost thereof.
- 3.2 It is necessary that the Bidder or his representatives visit the site of this project in order to familiarize himself with all phases of the work described herein.
- 3.3 Submitting a bid shall constitute full evidence that the Bidder has examined the site, read the specifications, examined the drawings, and is fully cognizant of the conditions under which the work will be conducted.

### 4. OMISSIONS, DISCREPANCIES, AND SUBSTITUTIONS

- 4.1 All substitution requests must include complete product information including all salient features highlighted, meeting and or exceeding the Basis of Design criteria. All Substitution Requests that are received incomplete and that do not contain all information required by the Owner to make a full evaluation, will be returned without action.
- 4.2 REQUESTS FOR SUBSTITUTIONS OF MATERIALS MUST BE MADE IN WRITING NO LATER THAN **THURSDAY, APRIL 3, 2025, AT 5:00 pm CST**. REQUESTS SUBMITTED AFTER THAT DATE WILL NOT BE CONSIDERED.
- 4.3 All Bidders will be informed in writing by the Owner of all interpretations or acceptable material substitutions made during the time of bidding; IN THE ABSENCE OF SUCH APPROVAL ALL ITEMS SHALL BE FURNISHED AS SPECIFIED.
- 4.4 **Should a Bidder find omissions from, or discrepancies in the drawings, specifications or other documents, or should he be in doubt as to their meaning, he shall at once notify the Owner in writing and obtain clarifications prior to submitting a bid.**
  - (1) **All requests for clarifications to the Owner's office shall be submitted in writing prior to (time, day, date).**
- 4.5 All bulletins, letters, or addenda affecting the Work, issued during the time of bidding, shall be covered in the bid and will become a part of the Construction Contract.
- 4.6 In the event there is a discrepancy between the drawings and specifications, the greater quantity and or the better quality of material shall prevail.

### 5. DISPOSITION OF BIDS

- 5.1 The Owner agrees to notify all Bidders as to the disposition of the award of the Contract within sixty (60) calendar days after the filing of bids.
- 5.2 The Owner reserves the right to accept any, or to reject any or all bids.
- 5.3 The Owner reserves the right to enter into negotiations with any Bidder.
- 5.4 The Owner reserves the right to make such changes in program or to change and adjust drawings and specifications as may be required to comply with the Owner's budgetary or other requirements.
- 5.5 The Owner reserves the right to waive any error or omission in a bid, in the Owner's sole and absolute discretion, if the Owner determines that such a waiver is in the Owner's best interest.

- 5.6 After bids are opened, but before a recommendation is made to the Board of Education, the three lowest bidders, General Contractor (or Contractors), shall be sent a written questionnaire for completion. This questionnaire will seek to verify the respective bid and confirm the bidders' understanding of the Project requirements. The bidders' respective responses to the questionnaire will then be used as part of the evaluation of the respective bidder's responsibility as a contractor and compliance with the terms of the letting. Each contractor shall provide an outlined project schedule with their responses to the questionnaire, outlining their approach to meet the Project Schedule outlined on the Form of Bid, Section 00300. Bidders will not be permitted to alter their bid amounts or otherwise provide any suggestions on value engineering or similar cost saving measures in their responses to the questionnaire. Only yes/no responses will be permitted on the questionnaire, with yes indicating that the bidder is confirming their understanding of the respective Project requirement and has accounted for that in their bid.
- 5.7 The Owner shall select the lowest responsible bidder complying with the terms of the letting. Bids will be evaluated to ensure compliance with all bidding requirements. Compliance with bidding requirements, as well as the information submitted with each bidder's Qualification Statement, shall be evaluated to determine whether each bidder is considered a responsible contractor. The Owner reserves the right to reject any bid on the basis that the information available to the Owner indicates the bidder is not a responsible contractor.

## 6. CONTRACT AND BOND

- 6.1 The form of contract shall be A.I.A. Document A-101-2017, "Standard Form of Agreement between Owner and Contractor for Construction of Building (Stipulated sum forms basis of payment)", as amended by the Owner and shown in Section 00800 herein, and the A.I.A. Document A201-2017, "General Conditions of the Contract for Construction" as amended by the Supplementary Conditions contained in Section 00800 herein. By submitting a bid, each bidder acknowledges and agrees that the Owner's selection of their firm shall in no way create a valid or binding contract between the firm and the Owner. Any firm submitting a bid agrees, by submitting a bid, that the final contract between the submitting firm and the Owner shall be in substantially the same form as the one included herein, as modified by the Supplementary Conditions. The submitting firm further agrees that it will make no attempt to change, delete, or otherwise modify these contractual terms through the firm's bid or after selection of the firm as the lowest responsible bidder complying with the terms of the letting, and further agrees that any attempt to do so shall be grounds for the Owner to reject the firm's bid, or otherwise cease negotiations with the selected firm, retain the firm's bid deposit, and select the next lowest bid.
- 6.2 Each Bidder shall state separately as indicated on the "Form of Bid" the cost of premium for furnishing a "Performance Bond" and "Payment Bond" as described in A.I.A. Form A-312. **The Bonding Company shall have an A.M. Best Rating of A, V, or better.**
- 6.3 A bid bond or bid deposit check will be required of Bidders.

## 7. DRAWINGS AND SPECIFICATIONS (ELECTRONIC COPY)

- 7.1 One electronic pdf shall be issued by the Owner to the bidders. A set of bidding documents shall consist of an electronic .pdf file of the drawings, specifications, and details, as issued.

## 8. BID DEPOSIT

- 8.1 Each General Contractor shall file with his bid a cashier's check in the amount of five percent (5%) of the total bid.
- A. In lieu of a cashier's check, a surety company bid bond in the minimum amount of five percent (5%) of the total bid will be acceptable. **The bond MUST be on AIA Form A310 to be accepted. The bid bond amount shall cover 5% of the TOTAL CONTRACT amount including performance and payment bond costs.**

- B. The check or bond shall be submitted as evidence of good faith on the part of the Contractor that he will proceed into execution of a formal contract for the erection, construction, and completion of the work or such portion of the work as may be determined by the Owner. Check shall be made payable to the Owner.
- C. Bid bond or cashier's check of the unsuccessful bidders will be returned after award of contract has been made, and that of the successful bidder will be returned after execution of the Contract. Except that, if the successful bidder refuses to enter into a contract with the Owner in substantially the same form as contained herein, the Owner shall be entitled to retain the bidder's bid bond.

## 9. QUALIFICATION STATEMENT

- 9.1 Each bidder submitting a bid shall utilize the "Contractor's Qualification Statement AIA A305" bound in this Specification as Appendix "C".
- 9.2 The Qualification Statement shall be completely filled out with all requested information and returned along with the information required under Section 10.2, **WITH THE BID**. In addition to the "Contractor's Qualification Statement AIA A305-2020", bidders must submit the following information with their bid:
  - 9.2.1 All litigation and arbitration in which your organization has been a party in the last five (5) years. With each individual lawsuit or arbitration, provide the date filed, the name of each individual party, case number (if applicable), venue, a short description of the contested issue(s), and the final disposition (including settlements).
  - 9.2.2 In Exhibit D or E of the AIA 305-2020, identify at least three (3) projects completed or in progress where the Owner is a public school district or public entity.
  - 9.2.3 For each project identified in Exhibits D and E of the AIA A305-2020, provide the following additional information:
    - 9.2.3.1 The original contract amount and the final contract amount.
    - 9.2.3.2 The original Substantial Completion and Final Completion dates in the contract, and the actual Substantial Completion and Final Completion dates.
    - 9.2.3.3 The total number of change orders for the project.
  - 9.2.4 Provide the number of instances in which liquidated damages have been assessed against you in the past five (5) years. For each instance, identify the applicable project, provide the total amount of liquidated damages assessed (per day and total days), and provide the same information required for projects identified in Exhibits D and E of the AIA A305-2020, including the additional information required under Section 10.2.3 above.
  - 9.2.5 In a short narrative, explain your philosophy on managing your subcontractors to ensure timely completion of the work in a workmanlike manner.
  - 9.2.6 Identify the following individuals who will be assigned to the Project: Project Director; Project Manager; Project Superintendent; Project Coordinator. For each of these individuals, also provide their relevant experience and indicate whether they will be assigned to the Project on a part-time or full-time basis.
  - 9.2.7 In a short narrative, any additional information you think relevant to provide context to the information required under this Section 10.

- 9.3 Bids will not be received from any bidder who has not filed a Qualification Statement, and included the additional information required under Section 10.2 with the Owner or with their bid.
- 9.4 The information submitted under this Section 10 will be used to evaluate the responsibility of the respective bidder. The Owner shall determine, in its sole and absolute discretion, whether a bidder is deemed not to be responsible based on the information submitted and the Owner's (or its consultants') own research. The Owner shall have the right to reject the bid of any bidder which is deemed by the Owner not to be a responsible contractor. All information will be evaluated against the following criteria:
- 9.4.1 Bidder's prior experience on similar projects or on the Owner's projects.
  - 9.4.2 Bidder's financial strength.
  - 9.4.3 Bidder's references and information provided by other previous clients of the bidder.
  - 9.4.4 Bidder's ability to effectively manage its subcontractors.
  - 9.4.5 Bidder's litigation, arbitration, and bond history.
  - 9.4.6 Bidder's safety record.
  - 9.4.7 Bidder's demonstrated ability to complete projects on time and within budget.

#### 10. MINIMUM WAGE RATES

- 10.1 Bidder should note that minimum wage rates, established by law, and listed in Appendix "B" must be paid for all labor performed at the site; see Supplementary Conditions, Article 13.
- 10.2 All bidders are advised that the provisions of Missouri Revised Statutes §§ 290.550-580 may be applicable for this Project depending upon the State of Missouri's unemployment figures. Contractor is responsible for determining if the statute is applicable, and for full compliance with this statute by Contractor, all subcontractors of any tier, and any other persons working on the Project.

#### 11. EQUAL OPPORTUNITY

- 11.1 The Bidder shall note that the provisions of the Equal Opportunity clause as described in the Supplementary Conditions, Article 13, shall apply to this work.

#### 12. "MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT"

- 12.1 The Bidder shall note that Senate Bill No. 74 establishes by act, that all public agencies entering into a contract for the purchase, manufacturing, installation, construction, alteration, repair, or maintenance of any public work shall be provided utilizing goods or commodities manufactured or assembled in the United States; See Supplementary Conditions, Article 13.

#### 13. STORAGE AND DELIVERY OF MATERIALS

- 13.1 The contractor shall include in their bid all costs associated with storage and delivery of all products related to this project. The costs shall include, but not limited to, storage costs, insurance, delivery, stocking, trucking, etc., as required to maintain products until needed on the job site.

#### 14. OWNER'S SPECIAL TAX EXEMPTION

- 14.1 The Contractor will use the Owner's tax exempt status for all purchases of materials and equipment for use on this project. The Owner will provide the Contractor with the Owner's tax exemption number and certificate to be used for the purchase of all materials and equipment. **Sales tax will not be required.**
- 14.2 The Contractor shall be required to provide all necessary accounting, invoice records, etc., and assistance as requested by the Owner in order to utilize the Owner's Tax Exempt status.

## 15. KEY DATES

- 15.1 Refer to Section 00300 for Key Dates.

## 16. "E-VERIFY" MISSOURI STATUTE

- 16.1 The Bidder should note that this Contractor shall comply with the Missouri Statute 285.530 titled "E-Verify" Addendum.

## 17. "OSHA" STATUTE

- 17.1 The Bidder should note that this Contractor shall comply with The Missouri Statute 292.675 Titled "OSHA – TRAINING REQUIREMENTS FOR CONSTRUCTION LABORERS".

## 18. DRUG AND ALCOHOL TESTING

- 18.1 The Contractor shall comply with the requirements of Section 167.371.1, RSMo, which stipulates that contractors and subcontractors on public works construction projects at public schools establish and implement a random drug and alcohol testing program. Any program must be administered by a certified laboratory and must require notification to the contractor/subcontractor and the contractor's/subcontractor's employee of the results of any positive drug and alcohol test. The School District must be notified of the action taken to protect the safety of the students and staff as a result of a positive test. The contractor/subcontractor will pay for the costs of the program.

## 19. CRIMINAL HISTORY RECORD

- 19.1 Contractor shall not utilize an employee, including a subcontractor or his employee, on Owner's property who is a registered sex offender or who has an unsatisfactory criminal record. Contractor shall have on file two types of background checks for all employees or subcontract employees who will be working on/in any Owner campus and/or buildings. The two checks are: Missouri Child Abuse or Neglect/Criminal Record Check; and, Missouri State Highway Patrol Criminal Record Check. Contractor shall not utilize an employee, including a subcontractor or his employee, on Owner's property whose background check reveals a conviction, guilty plea, or plea of nolo contendere for any of the following: 1) any crime involving sexual contact, sexual abuse, or sexual exploitation of a minor in any form; 2) any crime involving abuse or exploitation of a minor in any form; 3) any felony involving the use, sale, or possession of a controlled substance that occurred in the last 10 years; 4) any felony involving the use, sale, or possession of a weapon that occurred in the last 10 years; or, 5) any felony involving assault or other harm to another person that occurred in the last 10 years. Contractor shall provide to Owner an affidavit confirming that Contractor has complied with these requirements prior to commencement of the Work and with each Application for Payment. It shall be the responsibility of the Contractor to ensure all of its employees and its subcontractors' employees are in compliance with Owner's access security requirements.

## 20. SECURITY GUIDELINES

- 20.1 The Contractor shall be familiar with and adhere to the Owner's Board Policies, Regulations, Security Guidelines and Provisions.
- 20.2 Any workers(s) who violate security rules, disregard hazard signs, interfere with the Owner's operation, refuse to obey order(s) of the Owner's Representative, or are considered disorderly by the Owner's Representative shall be discharged from the work.

END OF SECTION 00100

**SECTION 00300 - FORM OF BID**

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Project: **BISMARCK R-V SCHOOL DISTRICT  
BID PACKAGE #4.1  
FENCING WORK**

Location of Project: **BISMARCK, MISSOURI**

Project No.: **24-46E.1**

Date: \_\_\_\_\_

Proposal of \_\_\_\_\_

\_\_\_\_\_ (hereinafter called "Bidder") a corporation, organization and existing under the laws of the State of Missouri, a partnership, or an individual doing business as \_\_\_\_\_

To: **BISMARCK R-V SCHOOL DISTRICT**

Gentlemen:

The Bidder, in compliance with your invitation for bids for the **BISMARCK R-V SCHOOL DISTRICT – BID PACKAGE #4.1 – FENCING WORK**, having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the conditions of the proposed project, hereby proposes to furnish all labor, materials and supplies, and to construct the project in accordance with the contract documents, within the time set forth therein and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this proposal is a part.

The Bidder acknowledges receipt of the following addendum: \_\_\_\_\_

A. Base Bid

The Bidder agrees to perform all work described in the specifications and on the drawings, for the lump sum of:

\_\_\_\_\_ dollars (\$\_\_\_\_\_)

B. Performance Bond

"Performance Bond" and "Payment Bond", A.I.A. Form No. A-312 for the Base Bid, **shall be furnished by a Bonding Company with an A.M. Best Rating of A, V, or better**, for all work included in the Base Bid amount; the cost of the Performance and Payment Bonds, which shall be added to the Base Bid, is:

\_\_\_\_\_ dollars (\$\_\_\_\_\_)

### C. Time

The Bidder agrees to commence work as stipulated in the Contract Documents AND hereby agrees to commence work on **Monday, June 2, 2025**, and complete the project by **Friday, August 8, 2025**, and as further defined in General and Supplementary Conditions, Article 8, "TIME", and Article 8.3.3, Liquidated Damages.

### D. Receipt of Bids

The Bidder understands that the OWNER reserves the right to reject any or all bids and to waive any technicalities in the bidding. The Bidder agrees that this bid shall be good and may not be withdrawn for a period of thirty (30) calendar days after the scheduled closing time for receiving bids.

### E. Acceptance of Bid

Upon receipt of written notice of the acceptance of this bid, the Bidder will execute the formal contract attached within fifteen (15) calendar days and deliver to the OWNER a surety bond or bonds as required by the General Conditions.

### F. Bid Security (Bid Bond)

The bid security attached in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_) is to become the property of the Owner in the event the contract and bond are not executed within the time above set forth, as liquidated damages for the delay and additional expense to the OWNER caused thereby. **The bid bond MUST be submitted on the AIA A310 Bid Bond Form to be accepted. The bid bond amount shall cover the TOTAL CONTRACT amount including performance and payment bond costs.**

Respectfully submitted,

Contractor \_\_\_\_\_

Physical Address \_\_\_\_\_

\_\_\_\_\_

Mailing Address (if different) \_\_\_\_\_

\_\_\_\_\_

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Telephone Number \_\_\_\_\_

Fax Number \_\_\_\_\_

E-mail Address \_\_\_\_\_

(Seal - if bid is by a corporation)

END OF SECTION 00300



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Project #24-46E.1  
Fencing Work  
Bismarck R-V School District

### THE OWNER:

*(Name, legal status and address)*

Bismarck R-5 School District  
165 Campus Drive  
Bismarck, Missouri 63624

### THE ARCHITECT:

*(Name, legal status and address)*

Hoener Architects, LLC  
6707 Plainview Avenue  
St. Louis, MO 63109

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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.

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



14      TERMINATION OR SUSPENSION OF THE CONTRACT

15      CLAIMS AND DISPUTES

Init.

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**User Notes:**

(1649686650)

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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, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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

#### **§ 1.1.8 Initial Decision Maker**

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

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

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

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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, 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.

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

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



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

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

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### **§ 3.3 Supervision and Construction Procedures**

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

**§ 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.

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

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

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

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

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

**§ 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 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### **§ 3.8 Allowances**

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



§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional,



whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

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

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work,

provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense 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.

**§ 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.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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

### **§ 4.2 Administration of the Contract**

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

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

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

### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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



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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period 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 for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 Subcontractual Relations

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

## § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

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

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

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

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

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

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

### **§ 6.2 Mutual Responsibility**

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

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

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

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

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

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

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

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

### **§ 7.1 General**

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

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

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

### **§ 7.2 Change Orders**

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

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

### **§ 7.3 Construction Change Directives**

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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



## **§ 8.2 Progress and Completion**

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

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

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

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

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

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

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

### **§ 9.2 Schedule of Values**

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

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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



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

§ 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, suppliers, or other persons or entities that 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, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

#### § 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

## § 9.6 Progress Payments

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

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

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

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

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

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

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

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

## **§ 9.7 Failure of Payment**

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

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

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

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

## **§ 9.9 Partial Occupancy or Use**

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

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

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



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

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

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

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

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

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

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

## **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, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

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

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

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

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

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the 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 and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the



procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

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

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

## **§ 11.3 Waivers of Subrogation**

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

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

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

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

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

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

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

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

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

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

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

##### **§ 12.2.2 After Substantial Completion**

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



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

§ 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.

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

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

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

#### § 12.3 Acceptance of Nonconforming Work

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

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 Governing Law

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

#### § 13.2 Successors and Assigns

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

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

#### § 13.3 Rights and Remedies

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

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

#### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## 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 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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

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

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

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

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

## § 14.3 Suspension by the Owner for Convenience

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

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

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

## § 14.4 Termination by the Owner for Convenience

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

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

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

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

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

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

#### **§ 15.1.2 Time Limits on Claims**

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

#### **§ 15.1.3 Notice of Claims**

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

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

#### **§ 15.1.4 Continuing Contract Performance**

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

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

#### **§ 15.1.5 Claims for Additional Cost**

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

#### **§ 15.1.6 Claims for Additional Time**

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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



### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

### § 15.2 Initial Decision

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

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

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

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

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

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

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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

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

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



**§ 15.4.4 Consolidation or Joinder**

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

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

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

## **SECTION 00800 - SUPPLEMENTARY CONDITIONS TO GENERAL CONDITIONS AIA DOCUMENT A201-2017**

The preceding document entitled "General Conditions of the Contract for Construction" and marked "AIA Document A201 - 2017" shall govern all Work of this Contract, except as modified by these Supplementary Conditions.

The following Supplementary Conditions shall take precedence over, supplement, and modify specific articles or statements of the General Conditions.

**ARTICLE 1 - GENERAL PROVISIONS** shall be modified as follows:

**Add the following Subparagraph 1.1.2.1 after Subparagraph 1.1.2:**

- 1.1.2.1** Execution of the Contract by the Contractor is a representation that the Contractor shall complete all the work per the Stipulated Lump Sum of the Contract, including any adjustments, but not limited to, addition and/or deduct Alternatives, negotiated price and scope revisions, etc., and that the Contractor shall provide all material, labor, transportation, etc., to complete the entire project within the agreed upon schedule. The Contractor shall not be entitled to increases in material, labor, or transportation costs as a basis for a claim for an increased contract amount.

**Add the following Subparagraph 1.1.3.1 after Subparagraph 1.1.3:**

- 1.1.3.1** Nothing contained in Subparagraph 1.1.3 shall alter the responsibilities established in Subparagraph 3.3.1.

**Add the following Subparagraphs 1.2.1.1 and 1.2.1.2 after Subparagraph 1.2.1:**

- 1.2.1.1** In case of conflict within or between the Contract Documents, the document or part thereof requiring the greater performance requirement, quantity, or quality shall take precedence as determined by the Owner.
- 1.2.1.2** Should it appear that any portion of the Work is not sufficiently detailed or explained on the drawings or in the specifications, the Contractor shall immediately request in writing that the Owner provide such additional drawings, specifications or explanations as may be necessary to clarify what Work is to be done. The Contractor shall comply with the information supplied by the Owner.

**Add the following Subparagraph 1.2.2.1 after Subparagraph 1.2.2:**

- 1.2.2.1** The Owner is not liable to the Contractor or any subcontractor (of any tier) for omissions or duplications due to real or alleged error in arrangement or titling of matters in the Contract Documents.

**ARTICLE 2 - OWNER** shall be modified as follows:

- 2.1.1** Add the following phrase to the beginning of the second sentence:

"Upon written request of the Owner, Contractor or any subcontractor or supplier of any tier,"

- 2.1.2** Delete Paragraph 2.1.2.

**Add the following Subparagraph after Subparagraph 2.3.6:**

- 2.3.7** The Owner shall provide the Contractor with information on the following matters:
- (a) Owner's intended use and operations at the Project site so that the Contractor can schedule and sequence its Work to avoid conflicts with Owner's intended use and operations.
  - (b) Any special scheduling requirements for the Work.
  - (c) Locations at the Project site for routing of delivery trucks, storage of materials and equipment prior to installation, office trailers, and worker parking.

**ARTICLE 3 - CONTRACTOR** shall be modified as follows:

**Add the following Subparagraph 3.2.2.1 after Paragraph 3.2.2:**

**3.2.2.1** Upon prompt written notification by the Contractor to the Owner discovering any errors, omissions or inconsistencies in the Contract Documents, the Contractor shall also inform the Owner if such item or issue requires immediate action and/or response from the Design Team, Consultants and/or Owner, including desired critical time response need, so as to not unintentionally create additional, if any, delay or unnecessary additional contract time or costs.

**3.2.3** Delete this paragraph in its entirety.

**Add Section 3.2.5.1 after Section 3.2.4:**

**3.2.5.1** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Owner (or Engineer) for evaluating and responding to the Contractor's request for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

**3.3.1** Substitute "using appropriate" for "using the Contractor's best" in first sentence.

**Add the following Subparagraphs 3.3.1.1 thru 3.3.1.3 after Paragraph 3.3.1:**

**3.3.1.1** The Contractor shall be responsible for coordinating and scheduling all of the Work, including the portions of the Work performed by Contractor's Subcontractors, sub-subcontractors, material suppliers, fabricators, and all other agents, employees, or other persons performing portions of the Work.

**3.3.1.2** Where required by local codes, jurisdictions, etc., this Contractor shall arrange for the proper installation of such components or items of the Work that are not of the type normally performed by Contractor's personnel, by contracting with persons or entities properly qualified for such work to perform those portions of the Work. All work by the Contractor and all Sub-Contractors shall conform to applicable Federal, State and Local Building Codes, and Regulations, including applicable OSHA regulations related to final installations as well as means and methods governing construction site safety.

**3.3.1.3** The Contractor shall review any and all specified construction or installation procedures (including those recommended or required by any product manufacturer). The Contractor shall advise the Owner in writing: (a) if following the specified procedures will affect any warranties; (b) if the specified procedures conflict with or violate the procedures recommended or required by any product manufacturer; or (c) of any objections which the Contractor may have with the specified procedures, or in violation of applicable codes or regulations.

**Add Sections 3.4.1.1 through 3.4.1.6 to Section 3.4.1:**

**3.4.1.1** The specification or identification of a certain brand, make, or manufacturer shall convey the style, type, character, capacity, function, quality, performance requirement, design, and appearance of the article required.

**3.4.1.2** All materials shall be factory labeled or shall be shipped in labeled containers describing the contents. Labels and containers shall be retained as necessary for review by the Owner.

**3.4.1.3** Erection, application, or installation of materials and equipment shall be in accordance with manufacturer's instructions, specifications and/or recommendations, as well as applicable building codes and regulations governing, including site safety.

**3.4.1.4** Substitutions of materials and equipment are not permitted without the prior written approval of the Owner.

**3.4.1.5** The Contractor may submit written requests for approval of a proposed substitution for specified materials and equipment. The request must include an explanation of the reason why the substitution should be considered. Possible reasons can include:

- (a) The specific material, product, component, assembly, or item specified or required as part of the Work is no longer manufactured, produced, fabricated, or has materially changed from the item specified. The Contractor and any applicable subcontractor, supplier, manufacturer, or fabricator must certify this fact in writing;
- (b) The proposed substitute provides a better value or product to the Owner. The Contractor and any applicable subcontractor, supplier, manufacturer, or fabricator must certify this fact in writing, and explain how or why the substitute provides a better value or product to the Owner; or
- (c) The substitution is necessary in order to maintain the construction sequence or schedule for the Work and the delay attributable to use of the specified materials and equipment was beyond the control of the Contractor. The Contractor and any applicable subcontractor, supplier, manufacturer, or fabricator must certify these facts in writing.

**3.4.1.6** By making a written request for substitution, the Contractor is deemed to:

- (a) Represent that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, utilizing the characteristics as defined in paragraph 3.4.1.5, and the relevant appropriate technical specification sections, drawings, and Project Manual information as a basis for selection and submission as a substitution;
- (b) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would have provided for that specified;
- (c) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
- (d) Certifies that the cost data presented is complete and that the Contractor waives all claims for any additional costs related to the substitution; and
- (e) The Contractor endeavored to select a substitution which met the appropriate criteria and did not require an adjustment to the Contract Sum.

**Replace Paragraph 3.4.2 with the following:**

**3.4.2** The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Owner for reviewing the Contractor's proposed substitutions and making agreed upon changes in the Drawings and Specifications resulting from such substitution.

**3.6** Delete "provided by the Contractor".

**Add the following Subparagraphs 3.6.1 thru 3.6.1.2 after Article 3.6 Taxes:**

**3.6.1** If applicable, the Owner may utilize its tax-exempt status for all material and equipment purchases.

**3.6.1.1** The Contractor and all subcontractors and suppliers of any tier shall cooperate fully with the Owner in order to take advantage of and use the Owner's tax-exempt status. Utilization of the Owner's tax exempt status shall not relieve the Contractor of any responsibility or liability normally assumed by the Contractor with respect to purchasing, ordering, receiving, unloading, storing, or installing any items purchased on a tax exempt basis; nor shall the method of purchase affect any guarantees and/or warranties on the items or their installation; or on the Work in general.

**3.6.1.2** The Contractor shall be required to provide all necessary accounting, invoice records, etc., as requested or directed by the Owner, and provide assistance to the Owner in order to utilize the Owner's tax-exempt status.

**Add Sections 3.7.1.1 and 3.7.1.2 to Section 3.7.1:**

- 3.7.1.1** The Contractor will pay the cost for ALL building permit, fire protection district permit, and related utility tap fees.
- 3.7.1.2** The Contractor shall obtain ALL temporary and final occupancy permits required by local governing authorities, and shall specifically obtain the following, included but not limited to, inspections and approvals:
- (a) All applicable jurisdictional approvals required for the Project Work.

**Supplement Paragraph 3.8.2.2 with the following language:**

- 3.8.2.2** Contractor overhead shall include all insurance and bond costs required by the contract as outlined in Appendix "A".

**Add the following Subparagraphs 3.10.1.1 thru 3.10.1.4 after Paragraph 3.10.1:**

- 3.10.1.1** The Contractor shall prepare and submit a written copy of an itemized construction schedule indicating starting and completion dates of the major and critical items of work. If changes in the durations or sequencing set forth in the Contractor's submitted schedule become necessary, the Contractor shall revise the schedule and resubmit it to the Owner. The Contractor's schedule must recognize and take into account that certain Work must be scheduled and coordinated in advance to permit appropriate adjustments in the Owner's operations which will allow the Contractor to perform its Work. The Contractor must follow the submitted schedule. The schedule shall be a bar chart or similar graph based on the items of work listed on the "Schedule of Estimated Values". The schedule shall be submitted prior to Contractor commencing Work. The Contractor shall submit an updated schedule with each Application for Payment and the updated schedule shall reflect current progress and anticipated completion dates for each item of work. The Contractor shall not be entitled to receive any payments until the current schedule has been updated and submitted.
- 3.10.1.2** Prior to commencing work, the Contractor shall meet with the Owner to discuss routing of delivery trucks at the site, location of storage and office areas, requirements for parking permits and parking locations.
- 3.10.1.3** The Contractor shall be required to schedule and sequence the Work as necessary in order to allow for Owner's operations at the Project site.
- 3.10.1.4** **The Contractor shall not mobilize on site and commence work on the project site without receipt of written approval of Performance Bond, Payment Bond, and Insurance, from the Owner.**

**Add the following Subparagraphs 3.12.5.1 thru 3.12.5.5 after Paragraph 3.12.5:**

- 3.12.5.1** Submittal of shop drawings shall be on the following basis:
- (a) All shop drawings shall be submitted digitally to the Owner, and shall have a cover sheet or title block containing the following information:
    - (1) Project title.
    - (2) Owner's name.
    - (3) Contractor's, subcontractor's, sub-subcontractor's, or distributor's name, address, and phone number making the submittal.
    - (4) Delivery date or dates for items shown.
    - (5) Item submitted.
    - (6) Supplier name.
    - (7) Manufacturer name.
  - (b) For any items that require color selections, physical samples shall be provided to the Owner for review and selection.



- (c) If, in order to complete the Work, additional copies of shop drawings or any other information are desired, these shall be supplied without additional cost to the Owner.

- 3.12.5.1.1** **Note:** If the General Contractor chooses to submit shop drawings electronically, the General Contractor shall bear the cost of all programming, management, set-up, etc., for electronic submittals. Full customization as required by the Owner of the project website shall be included in this service.
- 3.12.5.2** Shop drawings shall relate to adjacent work and indicate required clearances, dimensions, shop and field joints, jointing methods, details of construction, sizes of all members, methods of erection, methods of securing to adjacent work, accessory items, and finishes; and shall include a complete listing of prefabricated items and shall provide complete details for any shop-fabricated items.
- 3.12.5.3** Furnish full-size templates and rough-in drawings prior to delivery of any items requiring site preparation.
- 3.12.5.4** Samples shall be accompanied by a letter of transmittal which contains all of the information required under Subparagraph 3.12.5.1(a). Samples shall be submitted only through the Contractor.
- 3.12.5.5** Materials and equipment covered by catalog and data sheets will be approved only on the basis of published ratings.

**Add the following Subparagraphs 3.12.6.1 thru 3.12.6.5 after Subparagraph 3.12.6:**

- 3.12.6.1** In the case of mechanical and/or electrical equipment, the Contractor shall require review, cross coordination, and approval of shop drawings or samples by the appropriate subcontractors and suppliers of any tier prior to submittal to the Owner.
- 3.12.6.2** It shall be incumbent upon the Contractor to identify any discrepancies within the Contract Documents where materials, equipment, products, assemblies, or components require interface with or connect to the work of other trades. Any such discrepancy shall be identified and submitted in writing to the Owner for clarification and/or interpretation by the Owner.
- 3.12.6.3** Submittal of shop drawings, product data, samples, or similar submittals constitutes a representation by the Contractor and any and all applicable subcontractor(s) and supplier(s), that they have determined and verified all necessary and applicable criteria related thereto requiring interface and/or connection to the work of other trades and that the item submitted shall fit and function as intended.
- 3.12.6.4** Failure of the Contractor to verify, review, coordinate, and cross coordinate the Work as required by Subparagraph 3.12.6.3 (regardless of any review and approval of shop drawings, product data, samples, or similar submittals by the Owner), shall not relieve the Contractor of the requirements and responsibilities set forth in Subparagraph 3.12.6.3. The Contractor shall be completely responsible for all costs associated with or resulting from the failure to comply with the requirements of Subparagraph 3.12.6.3.
- 3.12.6.5** The Contractor shall be deemed to have approved any shop drawings submitted to the Owner.

**Add the following Subparagraph 3.12.8.1 after Subparagraph 3.12.8:**

- 3.12.8.1** "Deviation" for purposes of Subparagraph 3.12.8 shall include any change in dimension, material, method of assembly, detail, manufacturer or model number. The Contractor must provide a clear written explanation of and justification for each such deviation. In the case of a deviation with respect to the manufacturer, model number or both, the Contractor shall verify that such item will be properly accommodated within the space indicated by the Contract Documents and that affected Work (e.g. wiring, voltage, phase amperage, concrete pads, structural support, openings, etc., in the case of mechanical equipment) has been checked and necessary revisions made by the Contractor, at no added cost to Owner. This Subparagraph does not relieve the Contractor from obtaining prior approval for any substitute materials or equipment.

**Add Sections 3.12.10.1.1 and 3.12.10.1.2 to Section 3.12.10.1:**

- 3.12.10.1.1** The design professionals must be licensed or certified in the State where the Project is located and must be licensed or certified in the appropriate discipline.
- 3.12.10.1.2** The Contractor shall provide full information to the manufacturer as to the relevant performance requirements and conditions under which the materials, systems or equipment will be expected to operate. Certifications should be in the form of representation of performance under the anticipated operating conditions.

**Add Section 3.12.11 to Section 3.12:**

- 3.12.11** Contractor shall be solely responsible for verifying that the physical characteristics of all materials and equipment (i.e., height, length, width, weight, etc.) are fully compatible with the dimensions and support details provided in the plans and specifications for both the time of work at issue and all adjacent work - regardless of whether the materials and equipment are listed as approved or alternatives in the Contract Documents. The plans are based upon generic assumptions about the characteristics of the materials and equipment. The physical characteristics of the materials and equipment listed in the Contract Documents may differ from the characteristics assumed in the design of the Project. Any changes required to accommodate the materials and equipment selected by Contractor - even if from approved sources - shall be the sole responsibility of the Contractor.

**Add Section 3.12.12 to Section 3.12**

- 3.12.12** The Owner's review of Contractors submittals will be limited to examination of an initial submittal and two (2) re-submittals. The Contractor shall reimburse the Owner for the evaluation of additional re-submittals.

**Add the following Subparagraphs 3.13.1 thru 3.13.5 after Sub-Article 3.13, Use of Site:**

- 3.13.1** If applicable based upon information provided by the Owner, the existing buildings and facilities must remain in operation during construction and the Contractor shall take reasonable precautions to prevent interruption of services and/or the Owner's operations except when specifically agreed to by the Owner. No emergency exits shall be blocked or eliminated without express consent by the local Building Code and/or Fire Marshal.
- 3.13.2** If applicable based upon information provided by the Owner, the Contractor shall not: permit blocking of exits, driveways or sidewalks; cause a curtailment of Owner's essential services during working hours or otherwise interfere with the Owner's use and operations at the Project site unless the Contractor has received prior written approval by the Owner.
- 3.13.3** Interruption of services, if required, shall be arranged with the Owner and schedules agreed upon and adhered to in restoring such services.
- 3.13.4** The Contractor shall become familiar with and adhere to the Owner's security rules and provisions. All on site workers shall sign-in daily with the General Contractor Superintendent if required by the Owner.
- 3.13.5** Any worker(s) who violate security rules, disregard hazard signs, interfere with the Owner's operations, refuse to obey orders of the Owner, or are considered disorderly as determined by the Owner, shall be discharged from the Project.

**Add the following Subparagraph 3.14.1.1 after Subparagraph 3.14.1:**

- 3.14.1.1** The Contractor shall be responsible for thoroughly familiarizing himself with the existing site and facilities, and shall be required to perform all cutting, removal, fitting, adjustment, and patching required to perform the Work or make its parts fit together properly as necessary to complete the Work.

**Add the following Subparagraphs 3.15.3 thru 3.15.5 after Subparagraph 3.15.2:**

- 3.15.3** Immediately after unpacking materials, all packing case lumber or other materials, excelsior, wrappings, or other like flammable rubbish shall be collected and removed from the building and/or premises by the Contractor or applicable subcontractor.
- 3.15.4** Before any interior painting is begun, or at such time as may be directed by the Owner, the Contractor shall be responsible for ensuring that all trades thoroughly "broom clean" the spaces to be painted. This cleaning shall include the removal of all surplus materials from all surfaces; and all surfaces which are to be finished shall be left in a clean and suitable condition for painting and finishing.
- 3.15.5** Throughout construction the Project site and adjoining drives, parking areas and sidewalks shall be maintained neat and free of dirt and debris resulting from the Work. Accumulations of daily trash shall be periodically removed from the site. All areas shall be in a "broom clean, wet mopped, or vacuumed" condition when completed and ready for final inspection. Hardware, equipment, and all other exposed finish materials shall be cleaned of all extraneous paint, mortar, dirt, etc., immediately prior to the final inspection of the Work. All equipment with removable or detachable panels, covers, plates, etc., shall be cleaned on the inside before the apparatus is turned over for use by the Owner. All marred finishes shall be repaired, touched-up or replaced.

**ARTICLE 4 - ADMINISTRATION OF THE CONTRACT** shall be modified as follows:

**Add Section 4.2.2.1 to Section 4.2.2:**

- 4.2.2.1** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Owner for site visits made necessary by the fault of the Contractor or by defects and/or deficiencies in the Work.

**Section 4.2.4 should be deleted and replaced with the following Section 4.2.4:**

- 4.2.4** The Owner and Contractor shall communicate with each other through the Owner about matters arising out of or relating to the Project. Communications by and with the Owner's Consultants shall be through the Owner. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**Add the following Subparagraph 4.2.4.1 after Subparagraph 4.2.4:**

- 4.2.4.1** The Owner and his separate contractor(s) shall communicate with the Contractor and/or Owner as necessary or appropriate to assist the Contractor and/or Owner where the work of the Owner or his separate contractor(s) affects the execution or completion of the Work and/or responsibilities under the Contract Documents.

**Add the following Subparagraph 4.2.7.1 after Subparagraph 4.2.7:**

- 4.2.7.1** The Owner's review will include review of appearance and general characteristics. In the case of structural work (structural steel, reinforcing steel, etc.), the Owner and the appropriate consulting engineer will check cross sectional size and structural adequacy of members, but not dimensions affecting placement with respect to other members. In the case of mechanical or electrical equipment, the Owner and the appropriate consulting engineer will check performance characteristics, finishes, and general arrangement of components.

**Add the following Subparagraph 4.2.11.1 after Subparagraph 4.2.11:**

- 4.2.11.1** Should a request for an interpretation of the requirements of the Contract Documents by the Owner or Contractor require a decision and/or interpretation by the Owner within a specific amount of time in order to avoid a delay to the Project's schedule or materially affect the sequencing of the Work, either party shall so notify the Owner of any such time requirement in writing. The Owner will endeavor to render its interpretation within the requested time period provided that there is sufficient time in the Owner's professional judgment to permit adequate review. Failure of the Owner to render such interpretation within the requested period of time shall not be the basis for any claim against the Owner.

**Add Section 4.2.14.1 to Section 4.2.14:**

- 4.2.14.1** Contractor's request for information shall be prepared and submitted in accordance with the requirements of Division 1 – General Requirements (Provisions) section on a form deemed acceptable to the Owner or on AIA Document G716 – 2004. The Owner will return without action requests for information that do not conform to the requirements of the Contract Documents.

**ARTICLE 5 - SUBCONTRACTORS** shall be modified as follows:

**Add Section 5.1.3 after Section 5.1.2:**

- 5.1.3** The Contractor will submit an Application for Payment to the Owner not later than the 10<sup>th</sup> day of the month for the period covering the previous month. Both the Owner and the Contractor agree that this deadline shall be a material provision of this Contract. Upon receipt of certification from the Owner shall make a payment of the certified, undisputed amount to the Contractor not later than thirty (30) days after the date on which the Application for Payment is submitted. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than one week following Owner approval of the Application for Payment. All original Applications for Payment and supporting documents shall be mailed or delivered to the Owner.

**Add Section 5.2.1.1 to Section 5.2.1:**

- 5.2.1.1** Acceptance by the Owner of any Subcontractor, manufacturer and/or supplier shall not necessarily constitute acceptance of the materials proposed to be furnished by said Subcontractor, manufacturer and/or supplier or any of said Subcontractor's sub-subcontractors.

**Add the following Subparagraphs 5.2.3.1 and 5.2.3.2 after Subparagraph 5.2.3:**

- 5.2.3.1** The Contractor shall provide, within 7 days, all information and documentation reasonably requested by the Owner with respect to subcontractor(s), sub-subcontractor(s); including dated bids or bid proposals or other such price proposals received by the Contractor, for review by the Owner in determining a mutually agreed upon adjustment of the Contract Sum and/or Contract Time as may be made necessary by a decision rendered under Subparagraph 5.2.3.
- 5.2.3.2** The Contractor shall furnish to the Owner a copy of all contracts between the Contractor and Subcontractors and/or suppliers, within 7 days of a request for the contracts by the Owner.

**ARTICLE 7 - CHANGES IN THE WORK** shall be modified as follows:

**Add the following Subparagraph 7.2.1.4 to Subparagraph 7.2.1:**

- 7.2.1.4** The adjustment to the Contract Sum reflected on a Change Order shall include or cover the entire costs and effects of the Change and its impact on all other portions and facets of the Work. Additional compensation will not be granted to the Contractor for any additional work made necessary by the Change or any impact caused or created by the Change if not included in the Change Order. No additional Contract Time shall be granted to the Contractor for any additional work made necessary by the Change or any impact caused or created by the Change if not included in the Change Order.

**Add the following to the end of Subparagraph 7.3.3.2:**

- 7.3.3.2** Unit prices, whether included in the bid or subsequently agreed to by the parties, shall reflect and include all reasonable costs associated with the scope of work identified for the unit cost item, and shall include the Contractor's insurance costs, bond costs, overhead costs, and profit.
- 7.3.4** Insert the following after "overhead and profit" at the end of the first sentence:  
The total combined allowance for overhead and profit shall be based on the following schedule:  
For any work performed by the Contractor's own forces: **Ten percent (10%)**. For work performed by Contractor's Subcontractors or sub-subcontractors: **Ten percent (10%)**.

**Add the following Subparagraphs 7.3.5.1 and 7.3.5.2 after Subparagraph 7.3.5:**

- 7.3.5.1** Any claim for an increase Contract sum shall include all overhead costs. Overhead costs shall include all project insurance costs required for the project as outlined in Appendix "A". Overhead costs shall include, but not limited to, ALL front office expenses, project management, normal and customary field supervision, secretarial, accounting and related labor, field office expenses, small tools, and all normal and customary business operation expenses and costs.
- 7.3.5.2** Any claim for increase Contract sum where the Contract requires a Performance and Material and Labor Payment Bond, the bond cost shall be added (applied) to the total of the contract change order sum as the last item of the change order calculation. The Contractor shall not apply their overhead and profit percentage to the bond cost.

**ARTICLE 8 - TIME** shall be modified as follows:

**Add the following Subparagraph 8.1.1.1 after Subparagraph 8.1.1:**

- 8.1.1.1** The date of beginning and the time for completion as specified in the Contract are essential conditions of this Contract.

**Delete Section 8.1.4 and replace with the following:**

- 8.1.4** The term "day" as used throughout in the Contract Documents shall mean working days, excluding weekends and legal holidays.

**Add the following Subparagraphs 8.2.4 thru 8.2.6 after Subparagraph 8.2.3:**

- 8.2.4** The Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified.
- 8.2.5** The Owner's review of a Project schedule shall not relieve the Contractor of its responsibility to complete the Project within the Contract Time and shall not create any rights in favor of the Contractor for completion earlier than the Contract Time.
- 8.2.6** The Contractor is not entitled to recover any damages or losses allegedly incurred because the Contractor was prevented from completing the Project earlier than the end of the Contract Time.

**Add the following Subparagraphs 8.3.1.1 and 8.3.1.2 after Subparagraph 8.3.1:**

- 8.3.1.1** The Contractor's receipt of additional Contract Time shall be the only relief that Contractor shall be entitled to as a result of a delay. As may be permitted under Missouri Revised Statute Section 34.058 (2), the Contractor shall not be entitled to recover any delay damages of any kind or nature. See Subparagraph 15.1.4.2.



**8.3.1.2** The parties hereby recognize and agree that a pandemic may cause delays in the Work to the extent that any government mandate or order requires progress on the Work to stop, sufficient workers are not available to complete the Work, or there is a significant disruption in the supply chain of materials. In the event that any delays are caused by a pandemic, the parties will meet together with the Owner to discuss in good faith the effect of the pandemic on the Work, alternative solutions, and any change to the Contract Time. If the Contractor desires to claim additional time, the Contractor shall provide sufficient documentation or other evidence to justify the additional time in accordance with Article 15.

**8.3.3** Delete this Subparagraph.

**ARTICLE 9 - PAYMENTS AND COMPLETION** shall be modified as follows:

**Add the following at the end of Paragraph 9.2:**

**9.2** The Contractor shall submit a complete and detailed schedule of values by trade and type of work, as required by the Owner in sufficient detail to understand the various costs of the project. Breakdown shall be by labor and material/equipment when requested by the Owner. General Contractor shall also breakdown field supervision, overhead and profit and Bond cost as required by the Owner.

**Add the following Subparagraph 9.2.1 after Paragraph 9.2:**

**9.2.1** Contractor shall submit the completed Schedule of Values at least 15 days prior to the first application for payment.

**Add the following Subparagraphs 9.2.1.1 thru 9.2.1.3 after Subparagraph 9.2.1:**

**9.2.1.1** The Schedule of Values shall be further categorized and allocated between facilities or locations if the Work is located at separate sites and/or existing separate facilities and:

1. Each portion of the Work, by division or trade, shall be further divided into each location where Work is scheduled to be performed.

**9.2.1.2** The Schedule of Values shall identify each phase of the Work and allocate costs between each phase.

**9.2.1.3** The Contractor warrants that the breakdown amounts in its Schedule of Values are an accurate reflection of the total cost of each category or portion of the Work.

**Add the following Subparagraphs 9.3.1.3 thru 9.3.1.8 after Subparagraph 9.3.1.2:**

**9.3.1.3** All Applications for Payments shall be based on the approved Schedule of Values, shall describe each item of work, identify the scheduled value for the item of work, state the previous amounts paid, identify requests for stored materials, state the percentage of Work completed to date, state the amount due, and identify the balance remaining to be earned and paid for each line item on the Schedule. AIA document Application and Certificate for Payment form G702 shall be used. Note that the Application for Payment must be consistent with the updated Project Schedule.

**9.3.1.4** Payments will be made on a monthly basis.

**9.3.1.5** With each Application for Payment the Contractor shall provide unconditional lien waivers from all Subcontractors, sub-subcontractors and suppliers of any tier for Work processed two months prior, covering both labor and material.

**9.3.1.6** Until Substantial Completion, the Owner will pay 95% of the amount due the Contractor on any Application for Payment; the remaining 5% to be held as retainage to secure faithful performance of the Work and compliance with the Contract.

**9.3.1.7** With **each** Application for Payment, the Contractor shall provide certified payroll records.

**Add the following at the end of Subparagraph 9.4.1:**

- 9.4.1** After the word “seven” insert “working” (Monday thru Friday).

**Add the following Subparagraph 9.6.3.1 after Subparagraph 9.6.3:**

- 9.6.3.1** Any request by subcontractors of any tier for information concerning progress payments to the Contractor, as referred to in paragraph 9.6.3 shall be submitted to the Owner and Contractor in writing.

- 9.7.1** Delete the first sentence and substitute the following sentence:

If the Owner does not pay the Contractor within 30 days of the date the Contractor delivers a complete Application for Payment to the Owner with all required backup data and supporting documentation, then the Contractor may, upon seven additional days’ written notice to the Owner, stop the Work until payment of the amount owing has been received.

- 9.8.3** Add the following at the end of the last sentence:

“and with the new request the Contractor will provide the Owner with an updated list of items to be completed or corrected prior to final payment, including all construction work, and submittal, review and approval by the Owner and Design Team of all operation and maintenance manuals and record drawings required, including, warranties, final occupancy permits and ALL project close-out documents.

**Add the following Subparagraph 9.8.3.1 after Subparagraph 9.8.3:**

- 9.8.3.1** If the Owner makes three inspections for substantial completion at the request of the Contractor and determines that any item, whether or not included on the Contractor’s list, is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or use the Work or designated portion thereof for its intended use, the Contractor shall be responsible for paying the costs of all additional inspections by the Owner.

- 9.8.5** Delete the last sentence and substitute the following:  
Such payment shall be reduced by an amount equal to 150% of the value of each item of Work which is not complete, as determined by the Owner.

**Add the following Subparagraphs 9.8.6 and 9.8.7 after Subparagraph 9.8.5:**

- 9.8.6** If the Contractor fails to complete any items listed by the Owner as incomplete as of the date of Substantial Completion within the time designated by the Owner pursuant to Subparagraph 9.8.4, the Owner may immediately, without the need for further notice to the Contractor, proceed to have the Work completed and deduct all costs thereof from the sums being withheld from the Contractor pursuant to Subparagraph 9.8.5.
- 9.8.7** All Work performed after Substantial Completion of the Work, or any portion thereof shall be performed during hours that do not interfere with the Owner’s use and activities in the area; and the Contractor shall be responsible for any associated overtime or premium time charges. Scheduling of this remaining Work shall be coordinated with the Owner.

**Add the following Subparagraphs 9.9.1.1, through 9.9.1.5 after Subparagraph 9.9.1:**

- 9.9.1.1** The Owner may establish multiple and/or partial Substantial Completion Dates for the work, if applicable.
- 9.9.1.2** If a portion or part of the work or project is Substantially Complete, the Owner may occupy such portion. The Substantial Completion Date of such portion shall be determined by the Owner. The Contractor shall provide the Owner a written list of all known work to be completed or corrected (within that portion of the work) at the Date of Partial Substantial Completion. The Contractor shall endeavor to complete all remaining work as well as the items on an inspection list prepared by the Owner (and/or Consultants) within the specified time to complete same in the Contract.

- 9.9.1.3** The Owner retains the right to determine if a Partial Substantial Completion Date may be established for occupancy. The occupancy and use of such portion of the Project shall be predicated upon the approval by local authorities having jurisdiction of building and occupancy permits for the project including, but not limited to, local building inspectors, state elevator inspector, and/or fire marshal. In the absence of such authority, the Owner shall determine if the portion of the work is Substantially Complete. Establishment of such occupancy by the Owner does not relieve the Contractor of any responsibilities to complete the project in full compliance with all applicable codes, regulations, standards, etc., and per the Contract.
- 9.9.1.4** The Owner shall determine whether establishment of a Partial Substantial Completion Date(s) shall also include the commencement of standard or applicable warranties and guarantees. If in the opinion of the Owner, the standard or applicable warranties do not commence on the same date of the Partial Substantial Completion Date, the Owner shall identify such systems, components, or portions of the work, whereby the warranty/guarantee start dates do not commence with the Date of Partial Substantial Completion. The Owner shall notify the Contractor and Owner in writing identifying same and, if necessary, the cause for identification of same. The Owner shall not unreasonably withhold such approval/acceptance of systems, components or portions of the work without cause.
- 9.9.1.5** Establishment of a Partial Substantial Completion Date does not void applicable Liquidated Damages or portion thereof as required by or applicable to the Contract.
- 9.9.3** Add the following at the end of the sentence: “, shall not be deemed to be a waiver of any claims or rights by either the Owner or the Contractor, and shall not release any of Contractor’s bonds.”

**Add the following at the end of Subparagraph 9.10.1:**

- 9.10.1** If the Owner is advised by the Contractor that the Work is ready for final inspection with all items listed on Certificate of Substantial Completion completed, and upon inspection by the Owner, some items are found to be not in compliance with the Contract Documents, then the Owner may deduct from the amounts retained from the Contractor the costs associated with all subsequent inspections.

**ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY shall be modified as follows:**

**Add the following Subparagraph 10.2.1.4 after Subparagraph 10.2.1.3:**

- 10.2.1.4** All new and existing materials, fixtures, apparatus, and work shall be protected from damage whether incorporated into the finished Work or not, by protective devices, trailers, enclosures or coverings provided by the Contractor, unless otherwise specifically noted.

**Add the following Subparagraph 10.2.2.1 after Subparagraph 10.2.2:**

- 10.2.2.1** The Contractor, Subcontractor, sub-subcontractor, and any person, firm or entity involved in any aspect of the execution of the Work shall be experienced in the type of work or trade to be performed, shall be suitably trained, and/or licensed when so required, and supervised as necessary, and shall be responsible for performing all Work in accordance with all applicable laws, ordinances, rules, regulations and lawful orders of federal, state and local public authorities, and public or private utility companies bearing on the safety of persons or property or their protection from damage, injury or loss. The Contractor shall be required to contact public authorities and public or private utility companies prior to execution of any Work as required by the appropriate authority, for review and approval prior to starting Work.

**Add the following Subparagraph 10.2.8.1 after Subparagraph 10.2.8:**

- 10.2.8.1** If either party wishes to make a claim for money or time related to the injury or damage, a Claim shall be filed in accordance with Paragraph 15.1

**Add the following Subparagraphs 10.3.4.1 thru 10.3.4.3 after Subparagraph 10.3.4:**

- 10.3.4.1**      **The Contractor, Subcontractors, sub-subcontractors, material suppliers and all parties directly or indirectly involved in the Work shall not incorporate any asbestos-containing materials in the Work.**
- 10.3.4.2**      The Contractor, Subcontractors, sub-subcontractors, material suppliers and all parties directly or indirectly involved in the Work shall notify the Owner in writing, prior to executing any Work where a product, material, equipment or component of any kind, without limitation, contains asbestos-containing materials (ACM). The Owner shall approve a substitute for use which does not contain asbestos.
- 10.3.4.3**      **Upon Completion of the Work, the Contractor shall submit to the Owner a written certification that no asbestos-containing materials were incorporated into the Work.**

**ARTICLE 11 - INSURANCE AND BONDS** shall be modified as follows:

- 11.1.2**      Delete this Subparagraph and substitute the following Subparagraph:
- The insurance required by Subparagraph 11.1 shall be written for not less than the limits of liability specified in Appendix "A", or as required by law, whichever is greater. Appendix "A" is part of the Contract Documents. All insurance coverage shall be written on an "Occurrence" basis and shall be maintained without interruption from the commencement of Work until date of final payment and termination of any coverage required to be maintained after final payment. The Contractor shall be responsible for paying any and all deductibles on policies provided in accordance with Appendix "A".

**Add the following Subparagraphs 11.1.3.1 thru 11.1.3.7 after Subparagraph 11.1.3:**

- 11.1.3.1**      Liability Insurance shall include all major divisions or coverage and be on a comprehensive basis including:
1.      Premises Operations (including X, C and U).
  2.      Independent Contractor's Protective.
  3.      Products and Completed Operations.
  4.      Personal Injury Liability.
  5.      Contractual - including specified provision for Contractor's obligation under Paragraph 3.18.
  6.      Owner, non-owned and hired motor vehicles.
  7.      Broad Form Property Damage including Completed Operations.
  8.      Umbrella Excess Liability.
- 11.1.3.2**      The Contractor, Subcontractors, sub-subcontractors and material suppliers or distributors shall provide all necessary property insurance coverages to fully cover all materials and equipment stored off site and during transit, regardless of whether such material has been paid for by the Owner, and not incorporated into the Work.
- 11.1.3.3**      Certificates of Insurance shall be on the ACORD insurance certificate form 25-S, and three copies shall be provided to the Owner before the Contractor proceeds with any Work.
- 11.1.3.4**      In the event of cancellation of any insurance, the Contractor shall immediately notify the Owner and then, cease all operations until policies are again in force and Certificates filed with the Owner.
- 11.1.3.5**      Each certificate of insurance and policy shall state that the coverage applies to the Work being conducted at the Project site(s).
- 11.1.3.6**      Insert the following at the beginning of the last sentence: "If such insurance is purchased and maintained,"

**11.1.3.7** 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 (5) days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved by litigation.

**11.4.1** Delete Subparagraph 11.4. and substitute the following Subparagraph:

The Contractor shall furnish a Performance Bond and Payment Bond, each in the amount of 100% of the contract amount. **The Bonding Company shall have an A.M. Best rating of A, V, or better.** The bonds are to be executed by any acceptable surety company or companies authorized to execute such in the state in which the Project is located and shall be approved by the Federal Government to provide bonding and surety on construction projects and be written in favor of the Owner. If at any time the Owner for justifiable cause shall be or become dissatisfied with any surety or sureties who have written the Performance Bond and Payment Bond, the Contractor within five (5) days after notice from the Owner to do so, shall substitute an acceptable bond. Such premiums for other surety bonds shall be paid by the Contractor. No further payments shall be deemed due, nor shall any be made until the new surety or sureties have furnished such an acceptable bond to the Owner.

**ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK** shall be modified as follows:

**12.1.1** Substitute "Owner" for "Architect" in all three locations in the Subparagraph.

**Add the following Subparagraphs 12.2.1.1 after Subparagraph 12.2.1:**

**12.2.1.1** If the Contractor fails to correct such work within ten (10) days after receipt of written notice from the Owner, the Owner may have the work done and charge the costs thereof to the Contractor.

**Add the following Subparagraphs 12.2.2.2.1 and 12.2.2.2.2 after Subparagraph 12.2.2.2:**

**12.2.2.2.1** Should the Contract Documents require a Special Warranty(s), (other than specified manufacturer's warranties and guarantees) the Contractor's obligations with respect to such work and Special Warranties shall run concurrently for the specified period of time so specified, without limitation.

**12.2.2.2.2** In the event that a specified Warranty/Guarantee to be provided by a Manufacturer per the Contract Documents, not be provided the Contractor or available for submittal as specified, (due to circumstances/causes not under the control of the Contractor, without limitation), the Contractor shall provide the specified Warranty/Guarantee with the same essential terms from another reasonably acceptable source to meet the Warranty/Guarantee terms of the Contract Documents, prior to Final Completion.

**ARTICLE 13 - MISCELLANEOUS PROVISIONS** shall be modified as follows:

**Add Section 13.6 after Section 13.5:**

**13.6** **ATTORNEY'S FEES.** In the event of any dispute, claim or litigation arising out of or relating to this Contract, or the alleged breach thereof, or the Work, the prevailing party shall be awarded its attorney's fees, expert witness fees, expenses and Court costs, at the trial and all appellate levels.

**Add Section 13.7 after Section 13.6 and Add Sections 13.7.1 through 13.7.10 after Section 13.7:**

**13.7** The Contractor and all Sub-Contractors and sub-tier Contractors shall comply with all current requirements of the Missouri State's Labor Department rules and regulations regarding Prevailing Wage Law, rules, and regulations.



- 13.7.1** The rates of pay established by Appendix "B" – Prevailing Wage Rates, shall cover all labor performed at the site. These rates have been determined and adopted in accordance with the provisions of Sections 290.210 to 290.340 V.A.M.S., the Missouri Division of Labor Standards on behalf of the Department of Labor and Industrial Relations, State of Missouri. All required reports, affidavits and substantiating evidence required shall be periodically furnished. The highest rate listed for each category shall prevail.
- 13.7.2** The Contractor shall forfeit as a penalty to the Owner, **Bismarck R-V School District** the per day penalty amount specified by Missouri Revised Statutes 290.210 to 290.340, for each workman employed, for each calendar day (or portion thereof), such workman is paid less than the stipulated rates for any work done under this Contract by him or by any subcontractor under him.
- 13.7.3** All Contractor's bonds shall include such provisions as well as guarantee the faithful performance of the prevailing hourly wage clause as provided by this Contract.
- 13.7.4** Take cognizance of all complaints of all violations of provisions of the Missouri Prevailing Wage Law. Section 290.250.
- 13.7.5** The Contractor shall make sure a clearly legible statement of all prevailing hourly wage rates, to be paid to all workers employed in order to execute the contract and employed on the construction of the public works, is kept posted in a prominent and easily accessible place at the site thereof by each contractor and subcontractor engaged in the public works projects under the provisions of this law, and require that such notice shall remain posted during the full time that any worker shall be employed on the public works. Section 290.265.
- 13.7.6** The Contractor shall make available for inspection periodically, and when complaints are made, the records that are required to be kept pertaining to the wages paid all workers employed in the construction of the public works. Section 290.290.
- 13.7.7** The Contractor and subcontractors shall submit monthly, certified copies of their payrolls to the Owner's office, along with their pay application.
- 13.7.8** The Contractor shall notify the Missouri Division of Labor Standards when a violation of the law is discovered so that proper notice of the violation can be made, and the Attorney General alerted.
- 13.7.9** Before final payment is made, an affidavit must be filed by the Contractor stating that he has fully complied with the Prevailing Wage Law.
- 13.7.10** The Owner will withhold and retain therefrom all sums and amounts due and owing as a result of any violation of the Prevailing Wage Law. Section 290.250.

**Add the following Subparagraphs 13.8.1 thru 13.8.1.10 after Subparagraph 13.7.10:**

**13.8 Equal Opportunity**

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

**13.8.1.1** The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by an appropriate agency of the Federal Government setting forth the requirements of this Equal Opportunity clause.

- 13.8.1.2** The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
- 13.8.1.3** The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or worker's representative of the Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 13.8.1.4** The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant order of the Secretary of Labor.
- 13.8.1.5** The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by an appropriate agency of the Federal Government and by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- 13.8.1.6** In the event of the Contractor's noncompliance with the Equal Opportunity Conditions of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part; and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246 on September 24, 1965; and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation or order of the Secretary of Labor, or as provided by law.
- 13.8.1.7** The Contractor will include all of Clauses 13.9.1.1 through 13.9.1.7 inclusive in every Subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The contractor will take such action with respect to any Subcontract or purchase order as the appropriate agency of the Federal Government may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with, litigation to protect the interest of the United States.
- 13.8.1.8** Exemptions to the above Equal Opportunity conditions are Contracts and Subcontracts not exceeding \$10,000 and Contracts and Subcontracts under which work is performed outside the United States where no recruitment of workers within the United States is involved.
- 13.8.1.9** Unless otherwise provided, the above Equal Opportunity provisions are not required to be inserted in Sub-subcontracts except for Sub-subcontracts involving the performance of construction work at the site of construction, in which case the provisions must be inserted in all such sub-subcontracts.
- 13.8.1.10** The Contractor shall submit Equal Opportunity Affidavits as provided in Appendix "E".

**Add the following Subparagraph 13.9 thru 13.15 after Subparagraph 13.8.1.10:**

**13.9 Senate Bill No. 74 "Missouri Domestic Products Procurement Act"**

- 13.9.1** The Contractor, all subcontractors, and material suppliers shall be required to comply with all provisions of the "Missouri Domestic Products Act" requiring use of products, materials, commodities, etc., produced in the United States except as modified or excluded by this act.
- 13.9.1.1** The Contractor shall submit to the Owner a written certificate identifying any material, commodity, product or manufactured item not manufactured in the United States and which, if purchased in the United States, would add more than 10% to the cost of the project, or that insufficient quantities are available for use on the project.

### 13.10 Criminal History Record

Contractor shall not utilize an employee, including a subcontractor or his employee, on Owner's property who is a registered sex offender or who has an unsatisfactory criminal record. Contractor shall have on file two types of background checks for all employees or subcontract employees who will be working on/in any Owner campus and/or buildings. The two checks are:

- Missouri Child Abuse or Neglect / Criminal Record Check
- Missouri State Highway Patrol Criminal Record Check

Contractor shall not utilize an employee, including a subcontractor or his employee, on Owner's property whose background check reveals a conviction, guilty plea, or plea of nolo contendere for any of the following: 1) any crime involving sexual contact, sexual abuse, or sexual exploitation of a minor in any form; 2) any crime involving abuse or exploitation of a minor in any form; 3) any felony involving the use, sale, or possession of a controlled substance that occurred in the last 10 years; 4) any felony involving the use, sale, or possession of a weapon that occurred in the last 10 years; or, 5) any felony involving assault or other harm to another person that occurred in the last 10 years. Contractor shall provide to Owner an affidavit confirming that Contractor has complied with these requirements prior to commencement of the Work and with each Application for Payment. It shall be the responsibility of the Contractor to ensure all of its employees and its subcontractors' employees are in compliance with Owner's access security requirements.

### 13.11 "E-Verify" Missouri Statute

The Bidder should note that this Contractor shall comply with the Missouri Statute 285.530 title "E-Verify Addendum".

### 13.12 "OSHA" Missouri Statute

This contract shall be subject to the construction safety provisions of Section 292.675 of the Missouri Revised Statutes, approved by the Missouri General Assembly in 2008. All bidders are required to become familiar with this law. These provisions shall become part of the contract between the Owner and the Contractor.

The Contractor to whom the contract is awarded, **and any subcontractors** shall require all on-site employees to complete a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations (DOLIR). The DOLIR program must be at least as stringent as an approved OSHA program. All employees are required to complete the program within sixty (60) days of beginning work on the construction project.

Any employee found on a worksite subject to this section without documentation of the successful completion of the course required under subparagraph 2 above shall be afforded twenty (20) days to produce such documentation before being subject to removal from the project.

The Contractor shall forfeit as a penalty to the Owner, **Bismarck R-V School District**, \$2,500.00 (Two Thousand Five Hundred Dollars), plus \$100.00 (One Hundred Dollars), for each employee employed by the Contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period is subparagraph 2 and 3 above of this section have elapsed. The Owner shall withhold and retain therefrom, all sums and amounts due and owing as a result of any violation of this section when making payments to the Contractor under the contract. The Contractor may withhold from any subcontractor, sufficient sums to cover any penalties the Owner has withheld from the Contractor resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the Contractor may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court of the county in which the public works project is located from the subcontractor.

### **13.13 Random Drug and Alcohol Testing**

The contractor shall comply with the requirements of Section 161.371, RSMo, which stipulates that contractors or subcontractors on public works construction projects at public schools establish and implement a random drug and alcohol testing program. Any program must be administered by a certified laboratory and must require notification to the contractor/subcontractor and the contractor's/subcontractor's employee of the results of any positive drug and alcohol test. The school district must be notified of the action taken to protect the safety of the students as a result of a positive test. The contractor/subcontractor will pay for the costs of the program.

### **13.14 Missouri Department of Labor Checklist**

Every transient employer as defined in section 285.230 RSMo. must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) the notice of registration for employer withholding issued to such transient employer by the director of revenue; (2) proof of coverage for workers compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers compensation; and (3) the notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with the requirements shall be liable for a penalty of \$500 per day until the notices required by this section are posted as required by that statute.

### **13.15 Notice of Assurance – Israeli Goods or Service**

To the extent that § 34.600, RSMo. applies to the Contract, the Contractor will be required to certify in the Contract pursuant to said statute that it is not currently engaged in and shall not for the duration of the Contract engage in a boycott of goods or services from: the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or, persons or entities doing business in the State of Israel.

**ARTICLE 15 - CLAIMS AND DISPUTES** shall be modified as follows:

**Add the following Subparagraph 15.1.1.1 after Subparagraph 15.1.1:**

**15.1.1.1** Any and all persons or entities involved with or party to a Claim shall provide to the Owner, in a timely manner and without cost, all information, data, or documentation reasonably requested by the Owner.

**15.1.3.1** Substitute "30 days" for "21 days" in both locations in the second sentence.

**Add the following to Subparagraph 15.1.4:**

**15.1.4** After execution of the Contract, claims for additional costs shall not be permitted for any and all increases in material, labor, transportation, etc., or other costs incurred by the Contractor related to the work.

**Add the following Subparagraph 15.1.4.1.1 after Subparagraph 15.1.4:**

**15.1.4.1.1** If the Owner wishes to make Claim for a decrease in the Contract Sum or for reimbursement of any costs from the Contractor, the Owner shall provide written notice to the Contractor prior to performing any work for which its Claim is based. Prior notice is not required for Claims relating to an emergency endangering life or property.

**Add the following Subparagraphs 15.1.4.3 thru 15.1.4.9 after Subparagraph 15.1.4.1:**

**15.1.4.3** As may be permitted under Missouri Revised Statute Section 34.058 (2), the Contractor shall not be entitled to any increase Contract Sum for delay damages of any kind (whether direct costs, indirect costs, idle equipment charges, or overhead costs), early completion bonuses or punitive damages.

- 15.1.4.4** Any claim for an increase in the Contract Sum shall be deemed to include all associated costs (whether direct costs, indirect costs, overhead costs, bond costs, insurance costs, financing costs, schedule-related costs, impact costs, inefficiency costs, or otherwise) and all associated fees or profits.
- 15.1.4.5** After execution of the Contract, claims for additional costs shall not be permitted for costs related to price increases for material, labor, transportation, storage of material(s), overhead supervision front office expenses, or project supervision costs resulting from delays in commencement of the work not caused by the Owner. Such cause of delays may include, but not limited to, approval of zoning, building permits, obtainment of easements, state and local authorities having jurisdiction on the project.
- 15.1.4.6** Any claim for increased contract sum shall include all overhead costs. Overhead cost shall include all applicable project insurance costs related to the project as outlined in Appendix "A".
- 15.1.4.7** Any claim for increased contract sum where the contract requires a performance and material and labor payment bond, the bond cost shall be added (applied) to the total of the contact change order sum as the last item of the change order calculation. The contractor shall not apply the overhead and profit percentage to the cost of the bond.
- 15.1.4.8** If the Owner believes that it is entitled to a decrease in the Contract Sum or to reimbursement of any costs from the Contractor, the Owner shall file a Claim in accordance with Paragraph 15.1.
- 15.1.4.9** Any party submitting a Claim for money shall provide, in a timely manner and without cost, all information, data, or documentation reasonably requested by the Owner.

**Add the following Subparagraph 15.1.5.1. after Subparagraph 15.1.5:**

- 15.1.5.1.** The Contractor's Claim shall identify the specific number of calendar days requested, shall provide justification for the requested extension and identify the probable effect of delay on the progress of the Work.

**Add the following Subparagraphs 15.1.5.2 and 15.1.5.3 after Subparagraph 15.1.5.1:**

- 15.1.5.2** Claims for increases in the Contract Time due to adverse weather conditions shall be submitted on a monthly basis only and must be submitted by the end of the month following the adverse weather conditions. Failure to timely submit any such request to the Owner will constitute a waiver of any such Claim.
- 15.1.5.3** Adverse weather conditions are conditions that are considered abnormal for the applicable time of year and must have actually had an adverse effect on the Work in progress and must be in excess of the 30-year Norms, Means, and Extremes, as published by the National Weather Service, applicable to the location of the Project.

The Contractor's progress schedule must reflect these anticipated adverse weather days in all weather dependent activities. The following schedule of monthly anticipated adverse weather delays is as follows:

**Monthly Anticipated Adverse Weather Delay  
Work Days Based on Calendar Days (Monday thru Sunday)**

**Event Days**

Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
12	8	6	5	4	4	4	4	4	4	4	8

**Non-event Days**

Jan.	Feb.	Mar.	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
12	8	6	5	4	4	4	4	4	4	4	8



Actual adverse weather delay days must prevent work on critical path activities for Fifty (50) Percent or more of the Contractor's scheduled workday.

If the number of actual adverse weather delay days exceeds the number of days listed above, the Contractor shall notify the Owner in writing that the adverse weather delay days have been met.

**15.1.6** Delete this Paragraph.

**15.2.1** Substitute "90 days" for "30 days" in the third sentence.

**15.2.2** Substitute "30 days" for "ten days" in the first sentence.

**15.2.4** Substitute "30 days" for "ten days" in the first sentence.

Delete last sentence and substitute the following:

"Within 30 days of the receipt of the response or supporting data, if any, the Owner will take any action allowed under Subparagraph 15.2.2."

**15.2.5** Delete entire Paragraph, and substitute with the following:

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 Owner of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but shall be subject to non-binding mediation as a next step of dispute resolution process. If non-binding mediation has not resolved the dispute, the parties shall determine which of the following two methods upon which to proceed:

**15.2.6** Delete entire Paragraph.

**15.2.6.1** Delete entire Paragraph.

**15.3** Delete entire Section.

**15.4** Delete entire Section.

END OF SECTION 00800

## APPENDIX "A" - SUPPLEMENTARY CONDITIONS RELATING TO INSURANCE

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### ARTICLE 11 - INSURANCE

Paragraph 11.1 - "Contractor's Liability Insurance", shall be amplified by adding:

- A. CONTRACTORS INSURANCE REQUIREMENTS (supplements Article 11 of AIA Document A201, 2017 Edition and other forms) THESE SPECIFICATIONS APPLY TO ALL CONTRACTORS WHO WILL BE ON THE JOBSITE, WHETHER A GENERAL CONTRACTOR OR ANY SUBCONTRACTOR.

INSURANCE: Contractor shall, at its expense, procure and maintain at a minimum for the duration of the Project and through the correction period stated in the agreement, except as otherwise set forth herein, the types and amounts of insurance described below or as otherwise required by law on all of its operations, in companies registered to do business in the State of Missouri and having an A.M. Best Rating of A, V or higher:

1. Workers' Compensation and Employers Liability Insurance.  
Contractor shall carry Workers' Compensation Insurance as required by any applicable law or regulation. Employers Liability Insurance shall be in amounts no less than \$1,000,000 each accident for bodily injury, \$1,000,000 for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease. If there is an exposure of injury to Contractor's employees under the U.S. Longshoremen's and Harbor Workers Compensation act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. If the contractor's Employers Liability limits are below those stated above an umbrella liability policy may be used to the requested limit.
2. Commercial General Liability Insurance  
Contractor shall carry Commercial General Liability Insurance written on ISO occurrence form CG 00 01 07 98 or later edition (or a substitute form providing equivalent coverage) and shall cover all operations by or on behalf of the Contractor, providing insurance for bodily injury liability and property damage liability for the limits indicated below and for the following coverage:
  - (1) Premises and Operations
  - (2) Products and Completed Operations
  - (3) Contractual Liability insuring the obligations assumed by the Contractor under this contract.
  - (4) Personal Injury Liability and Advertising Injury Liability

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the general aggregate limit shall apply separately to the Contractor's project under this Contract. Completed Operations coverage must be maintained for the correction period provided by the agreement.

Limit of Liability.

The Commercial General Liability policy limits shall not be less than:

\$1,000,000	Each Occurrence (Combined Single Limit for Bodily Injury and Property Damage)
\$2,000,000	Aggregate for Products/Completed Operations
\$1,000,000	Personal Injury/Advertising Injury
\$2,000,000	General Aggregate (provide endorsement to apply the General Aggregate per project, if available. If not, see Umbrella Liability section.)

#### Additional Insured

The Owner, all of its officers, directors and employees, shall be named as Additional Insureds under the Commercial General Liability Insurance using ISO Additional Insured Endorsements CG 20 10 or substitute providing equivalent coverage. If additional insured status is required for a correction period then CG 20 37 or equivalent should also be used. These endorsements must be stated on the insurance certificate provided to the Owner and a copy of the endorsements confirming coverage should accompany the insurance certificate.

#### Primary Coverage

The Contractor's Commercial General Liability Policy shall apply as primary insurance and any other insurance carried by the Architect or the Owner shall be excess only and will not contribute with Contractor's insurance. This must be stated on the insurance certificate and a copy of the endorsement confirming coverage should accompany the insurance certificate.

3. Business Automobile Liability Insurance

The policy should be written on ISO form CA 0001, CA 0005, CA 0002, CA0020 or a substitute form providing equivalent coverage and shall provide coverage for all owned, hired and non-owned vehicles. The limit of liability should be at least \$1,000,000 Combined Single Limit for Bodily Injury and Property Damage each accident and should also cover Automobile Contractual Liability. The policy should name the Owner and all of its officers, directors and employees as Additional Insureds. The policy shall be endorsed to be primary coverage and any other insurance carried by the Owner shall be excess only and will not contribute with Contractor's insurance. To confirm coverage, a copy of the Additional Insured Endorsement and the Primary Insurance Endorsement should accompany the insurance certificate.

4. Umbrella Excess Liability.

The Contractor should provide an umbrella excess liability policy that will provide a minimum of \$2,000,000 per occurrence/\$2,000,000 aggregate over the above listed coverages. This policy should "follow-form" of the underlying policies and comply with all insurance requirements of those policies. If the General Aggregate of the Commercial General Liability policy does not apply per project, the limits should be \$3,000,000 per occurrence/\$3,000,000 aggregate.

5. Waiver of Subrogation

The Commercial General Liability and Automobile Liability policies shall each contain a waiver of subrogation in favor of the Owner and its officers, directors and employees.

6. Certificates of Insurance

As evidence of the insurance, limits and endorsements required, a standard ACORD or equivalent Certificate of Insurance executed by a duly authorized representative of each insurer shall be furnished by the Contractor to the Owner and Architect before any Work under the Contract is commenced by the Contractor. Owner shall have the right, but not the obligation, to prohibit Contractor or any Subcontractor from entering the Project site until such certificates are received and approved by the Owner. With respect to insurance to be maintained after final payment, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner as a precondition to final payment. The Certificate of Insurance shall provide that there will be no cancellation or reduction of coverage without 30 days prior written notice to the Owner. Failure to maintain the insurance required herein may result in termination of the Contract at Owner's option. In the event the Contractor does not comply with the requirements of this section, the Owner shall have the right, but not the obligation, to provide insurance coverage to protect the Owner and Architect, and charge the Contractor for the cost of that insurance. The required insurance shall be subject to the approval of the Architect, but any acceptance of insurance certificates by the Architect or Owner shall in no way limit or relieve the Contractor of their duties and responsibilities in this Agreement.

7. Copies of Policies.  
Contractor shall furnish a certified copy of any and all insurance policies required under this Contract within ten (10) days of Owner's written request for said policies.
8. Subcontractors  
Contractor shall cause each Subcontractor to purchase and maintain insurance of the types and amounts specified herein. Limits of such coverage may be reduced only upon written agreement of Owner. Contractor shall provide to Owner copies of certificates evidencing coverage for each Subcontractor. Subcontractors' commercial general liability and business automobile liability insurance shall name Owner and Architect as Additional Insureds and have the Waiver of Subrogation endorsement added.
9. Other Insurance.  
The Owner may require insurance coverage in excess of the types and amounts required in this Exhibit. Contractor shall attempt in good faith to obtain quotes for such additional coverage and provide them to Owner for review. The contractor shall purchase any such additional insurance as may be requested by the Owner in writing. The Owner shall pay any additional premium for such additional coverage.

END OF APPENDIX "A"

# Missouri

## Division of Labor Standards

### WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

## Annual Wage Order No. 31

Section 095

### ST. FRANCOIS COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Todd Smith, Director  
Division of Labor Standards

Filed With Secretary of State: March 8, 2024

Last Date Objections May Be Filed: April 8, 2024

Prepared by Missouri Department of Labor and Industrial Relations



Building Construction Rates for  
ST. FRANCOIS County

Section 095

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$69.71
Boilermaker	\$23.76*
Bricklayer-Stone Mason	\$47.67
Carpenter	\$54.34
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$58.35
Plasterer	
Communication Technician	\$23.76*
Electrician (Inside Wireman)	\$73.23
Electrician Outside Lineman	\$23.76*
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	\$23.76*
Glazier	\$23.76*
Ironworker	\$70.77
Laborer	\$44.61
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
Mason	\$23.76*
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$70.21
Group I	\$24.13*
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$49.17
Plumber	\$70.62
Pipe Fitter	
Roofer	\$60.27
Sheet Metal Worker	\$74.12
Sprinkler Fitter	\$23.76*
Truck Driver	\$23.76*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

\*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

\*\*The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in RSMo Section 290.210.

Heavy Construction Rates for  
ST. FRANCOIS County

Section 095

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$23.76*
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$23.76*
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Laborer	\$49.28
General Laborer	
Skilled Laborer	
Operating Engineer	\$65.71
Group I	
Group II	
Group III	
Group IV	
Truck Driver	\$23.76*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

\*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

\*\*The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.

# OVERTIME and HOLIDAYS

## OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, **"overtime work"** shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

## HOLIDAYS

January first;  
The last Monday in May;  
July fourth;  
The first Monday in September;  
November eleventh;  
The fourth Thursday in November; and  
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

# AIA<sup>®</sup> Document A305<sup>™</sup> – 2020

## Contractor's Qualification Statement

THE PARTIES SHOULD EXECUTE A SEPARATE CONFIDENTIALITY AGREEMENT IF THEY INTEND FOR ANY OF THE INFORMATION IN THIS A305-2020 TO BE HELD CONFIDENTIAL.

SUBMITTED BY: \_\_\_\_\_ SUBMITTED TO: \_\_\_\_\_  
(Organization name and address.) (Organization name and address.)

### TYPE OF WORK TYPICALLY PERFORMED

(Indicate the type of work your organization typically performs, such as general contracting, construction manager as constructor services, HVAC contracting, electrical contracting, plumbing contracting, or other.)

THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:  
(Check all that apply.)

- ☐ Exhibit A – General Information
- ☐ Exhibit B – Financial and Performance Information
- ☐ Exhibit C – Project-Specific Information
- ☐ Exhibit D – Past Project Experience
- ☐ Exhibit E – Past Project Experience (Continued)

### CONTRACTOR CERTIFICATION

The undersigned certifies under oath that the information provided in this Contractor's Qualification Statement is true and sufficiently complete so as not to be misleading.

\_\_\_\_\_  
Organization's Authorized Representative  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

### NOTARY

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Signed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Signature

My commission expires: \_\_\_\_\_

### 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.

## **APPENDIX “D” -FEDERAL WORK AUTHORIZATION PROGRAM (“E-VERIFY”) ADDENDUM**

Pursuant to Missouri Revised Statute 285.530, all business entities awarded any contract in excess of five thousand dollars (\$5,000) with a Missouri public school district must, as a condition to the award of any such contract, be enrolled and participate in a federal work authorization program with respect to the employees working in connection with the contracted services being provided, or to be provided, to the District (to the extent allowed by E-Verify). In addition, the business entity must affirm the same through sworn affidavit and provision of documentation. In addition, the business entity must sign an affidavit that it does not knowingly employ any person who is an unauthorized alien in connection with the services being provided, or to be provided, to the District.

Accordingly, your company:

a) agrees to have an authorized person execute the attached “Federal Work Authorization Program Affidavit” attached hereto as Exhibit A and deliver the same to the District prior to or contemporaneously with the execution of its contract with the District;

b) affirms it is enrolled in the “E-Verify” (formerly known as “Basic Pilot”) work authorization program of the United States, and are participating in E-Verify with respect to your employees working in connection with the services being provided (to the extent allowed by E-Verify), or to be provided, by your company to the District;

c) affirms that it is not knowingly employing any person who is an unauthorized alien in connection with the services being provided, or to be provided, by your company to the District;

d) affirms you will notify the District if you cease participation in E-Verify, or if there is any action, claim or complaint made against you alleging any violation of Missouri Revised Statute 285.530, or any regulations issued thereto;

e) agrees to provide documentation of your participation in E-Verify to the District prior to or contemporaneously with the execution of its contract with the District (or at any time thereafter upon request by the District), by providing to the District an E-Verify screen print-out (or equivalent documentation) confirming your participation in E-Verify;

f) agrees to comply with any state or federal regulations or rules that may be issued subsequent to this addendum that relate to Missouri Revised Statute 285.530; and

g) agrees that any failure by your company to abide by the requirements a) through f) above will be considered a material breach of your contract with the District.

By: \_\_\_\_\_ (signature)

Printed Name and Title: \_\_\_\_\_

For and on behalf of: \_\_\_\_\_ (company name)



EXHIBIT A

FEDERAL WORK AUTHORIZATION PROGRAM AFFIDAVIT

I, \_\_\_\_\_, being of legal age and having been duly sworn upon my oath, state the following facts are true:

1. I am more than twenty-one years of age; and have first-hand knowledge of the matters set forth herein.

2. I am employed by \_\_\_\_\_ (hereinafter "Company") and have authority to issue this affidavit on its behalf.

3. Company is enrolled in and participating in the United States E-Verify (formerly known as "Basic Pilot") federal work authorization program with respect to Company's employees working in connection with the services Company is providing to, or will provide to, the District, to the extent allowed by E-Verify.

4. Company does not knowingly employ any person who is an unauthorized alien in connection with the services Company is providing to, or will provide to, the District.

FURTHER AFFIANT SAYETH NOT.

By: \_\_\_\_\_ (individual signature)

For \_\_\_\_\_ (company name)

Title: \_\_\_\_\_

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:

**APPENDIX “E” – CERTIFICATION REGARDING ISRAEL**

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PROJECT:     **BISMARCK R-V SCHOOL DISTRICT  
                  BID PACKAGE #4.1 – FENCING WORK**

## CERTIFICATION REGARDING ISRAEL

1. Contractor hereby certifies in writing to the \_\_\_\_\_ School District as follows (for purposes of this certification, Contractor shall be referred to as Company):

That Company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

2. As used in this certification, the following terms and phrases shall be defined as follows:

(a) "Boycott Israel" and "boycott of the State of Israel", engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel. A company's statement that it is participating in boycotts of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel shall be considered to be conclusive evidence that a company is participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized

under the laws of the State of Israel; or persons or entities doing business in the State of Israel; provided, however that a company that has made no such statement may still be considered to be participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel if other factors warrant such a conclusion; and

(b) "Company", any for-profit or not-for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.

In Witness Whereof, the foregoing certification is entered into as of \_\_\_\_\_, 20\_\_\_\_.

Contractor/Company:\_\_\_\_\_

By:\_\_\_\_\_

Authorized Party

## SECTION 01000 - GENERAL PROVISIONS

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### 1. GENERAL

#### 1.1 SUMMARY OF WORK

- A. The work of this contract comprises the **Bismarck R-V School District, Bid Package #4.1, Fencing Work.**
- B. Construct the work under a Stipulated Sum contract.
- C. All work on the project, shall be executed as part of the work of this contract.

#### 1.2 RELATED REQUIREMENTS

- A. Section 00800 - Supplementary Conditions.

#### 1.3 PROJECT COORDINATION

- A. The Contractor shall coordinate the work, including the work of all subcontractors for the project.
- B. The Contractor shall schedule and conduct progress meetings.
- C. Note that the existing building on this site must remain in operation during construction and EVERY PRECAUTION MUST BE TAKEN TO PREVENT INTERRUPTION OF SERVICES.
- D. All work which requires the interruption of existing utility services, to the existing building(s), shall be performed at times when the buildings are not in use by the Owner, and when the Contractor has received the prior approval of the Architect.
- E. **The Contractor is responsible for all overtime, weekend, or other premium time required to complete this project.**
- F. Prior to start of field work, the Owner's Representative shall hold a pre-construction conference at the site in a location to be designated, in order to discuss coordination, procedures, routing of delivery trucks, location of storage areas, requirements for Contractor's parking of vehicles, barricades, security and scheduling. The Contractor shall inform the Owner of both the starting and completion dates of the site work prior to beginning any particular phase of work at the site.

#### 1.4 SECURITY GUIDELINES

- A. The Contractor shall be familiar with and adhere to the Owner's security guidelines and provisions.
- B. Any workers(s) who violate security rules, disregard hazard signs, interfere with the Owner's operation, refuse to obey order(s) of the Owner's Representative, or are considered disorderly by the Owner's Representative shall be discharged from the work.

#### 1.5 CUTTING AND PATCHING

- A. The Contractor shall be responsible for all cutting, fitting, and patching, including attendant excavation and backfill required to complete the work or to:
  - (1) Make its several parts fit together properly.
  - (2) Uncover portions of the work to provide for installation of ill-timed work.
  - (3) Remove and replace defective work.
  - (4) Remove and replace work not conforming to requirements of the Contract Documents.
  - (5) Remove samples of installed work as specified for testing.
  - (6) Repair all damage caused by work under this contract.
- B. Execute cutting and demolition by methods which will prevent damage to other work and will provide proper surfaces to receive installation of repairs.
- C. Execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes.
- D. Restore work which has been cut or removed; install new products to provide complete work in accordance with requirements of the Contract Documents.



## 1.6 BURIED UTILITIES

- A. The Contractor shall verify that all utilities are marked prior to commencement of any excavation.

## 1.7 TEMPORARY UTILITIES

- A. Furnish, install, and maintain temporary utilities required for construction; remove on completion of work.
- B. Materials may be new or used but must be adequate in capacity for the required usage, must not create unsafe conditions, and must not violate requirements of applicable codes, standards, or utility companies.
- C. Temporary Electricity and Lighting:
  - (1) Provide connections to existing facilities, size to provide service required for power and lighting; Owner will pay the cost of power used.
  - (2) Provide electric services for construction purposes as specified in Division 16.
- D. Temporary Telephone Service
  - (1) Arrange with local telephone service company, provide direct line telephone service at the construction site for the use of the Architect and the Contractor.
  - (2) Coin-operated telephone will not be acceptable.
  - (3) Pay all costs for installation, maintenance and removal, and service charges for local calls.
- E. Temporary Water
  - (1) Make connections to existing facilities, provide water for construction purposes; Owner will pay costs of water used.
  - (2) Install branch piping with taps located so that water is available throughout the construction by the use of hoses. Protect piping and fittings against freezing and vandalism.
- F. Temporary Sanitary Facilities
  - (1) Provide sanitary facilities, in compliance with laws and regulations, at approved locations and screened to secure privacy.
  - (2) Service, clean, and maintain facilities and enclosures.
- G. Drinking Water
  - (1) Furnish, without charge to subcontractors, adequate drinking water on the job site as long as the Contractor has personnel on the job requiring drinking water.

## 1.8 CONSTRUCTION AIDS

- A. Provide construction aids and equipment required by personnel and to facilitate execution of the work; scaffolds, staging, ladders, stairs, ramps, runways, platforms, railings, hoists, cranes, chutes, and other such facilities and equipment.
- B. Provide protective coverings for finish surfaces of cars and entrances.
- C. Maintain facilities and equipment in first class condition.

## 1.9 CONSTRUCTION FENCES AND BARRIERS

- A. Preserve and protect existing trees and plants at site which are designated to remain, and those adjacent to site.

- (1) Provide temporary barriers to a height of six feet, around each, or around each group, of trees and plants.
- (2) Protect root zones of trees and plants.
  - (a) Do not allow vehicular traffic or parking.
  - (b) Do not store materials or products.
  - (c) Prevent dumping of refuse or chemically injurious materials or liquids.
  - (d) Prevent puddling or continuous running water.
- (3) Carefully supervise excavating, grading, filling, and subsequent construction operations to prevent damage.
- (4) Replace, or suitably repair, trees and plants designated to remain which are damaged or destroyed due to construction operations.

#### 1.10 MATERIAL DELIVERY AND STORAGE

- A. Arrange deliveries of products in accordance with construction schedules; coordinate to avoid conflict with work and conditions at the site.
  - (1) Deliver products in undamaged condition, in manufacturer's original containers or packaging, with identifying labels intact and legible.
  - (2) Immediately on delivery, inspect shipments to assure compliance with requirements of Contract Documents and approved submittals, and that products are properly protected and undamaged.
- B. Provide equipment and personnel to handle products by methods to prevent soiling or damage to products or packaging.
- C. All materials, fixtures, and apparatus shall be protected from damage, whether incorporated into the building or not, by protective devices or coverings provided by the Contractor, unless otherwise specifically noted in individual sections.
- D. Store products in accordance with manufacturer's instructions with seals and labels intact and legible.
  - (1) Store products subject to damage by the elements in weathertight enclosures.
  - (2) Maintain temperature and humidity within the ranges required by manufacturer's instructions.
- E. Exterior Storage
  - (1) Store fabricated products above the ground, on blocking or skids, to prevent soiling or staining. Cover products which are subject to deterioration with impervious sheet coverings. Provide adequate ventilation to avoid condensation.
  - (2) Store loose granular materials in a well-drained area on solid surfaces to prevent mixing with foreign matter.
- F. Arrange storage in a manner to provide easy access for inspection. Make periodic inspections of stored products to assure that products are maintained under specified conditions, and free from damage or deterioration.
- G. Storage of materials shall be confined within the limits of construction area.
- H. Prior to commencing work, the Contractor shall discuss location of storage areas with the Owner.

#### 1.11 PROTECTION OF WORK

- A. All materials, fixtures, and apparatus shall be protected from damage, whether incorporated into the building or not, by protective devices or coverings provided by the Contractor, unless otherwise specifically noted in individual sections.

- B. Finished surfaces, materials, and installed devices and equipment shall be covered and protected against all damage, dirt, and demarcation, staining, dripping, or splashing.
- C. As the work progresses, provide and maintain adequate temporary means of protection.
  - (1) Provide temporary railings, barricades, coverings, housings, planking, fencing, etc., for the protection of complete or partially completed work, and provide warning lights, guards, flashers, flags, etc., where required by laws or as required for safety.
  - (2) Protect, as for new finishes, all adjacent properties from damage.

#### 1.12 CLEANING

- A. Execute cleaning during progress of the work and at completion of the work as required by the General Conditions.
  - (1) The building premises, site, drives, parking areas, sidewalks, and adjoining streets shall be made neat and free of earth and debris resulting from this work.
  - (2) The Contractor shall be responsible and pay for the periodic removal of all rubbish and debris from the building and job site.
- B. Conduct cleaning and disposal operations to comply with codes, ordinances, regulations, and anti-pollution laws.
- C. Cleaning Materials:
  - (1) Use only those cleaning materials which will not create hazards to health or property and which will not damage surfaces.
  - (2) Use only those cleaning materials and methods recommended by manufacturer of the surface material to be cleaned.
  - (3) Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

#### 1.13 EXISTING FACILITIES

- A. If it is necessary in the prosecution of the work to interrupt existing surface drainage, sewers, conduits, utilities, or similar underground structures, or parts thereof, the Contractor shall be responsible for and take all necessary precautions to protect and preserve or provide temporary services for same.
- B. When such facilities are encountered, the Contractor shall notify the Architect who shall arrange for their removal or adjustment, if necessary. The Contractor shall, at his own expense, satisfactorily repair all damage to such facilities or structures which may result from his operations or from negligence during the period of the contract.
- C. Existing paving of all kinds, which is not involved in work under the contract, but which may be damaged due to delivery of materials, shall be repaired; and on completion of the work, shall be left in the same or better condition as when construction started. Replace concrete to nearest joint.

#### 1.14 EXISTING MATERIALS

- A. Except as specifically indicated or specified, materials and equipment removed from the existing structure shall not be used in the completed work, and shall be removed from the site.

#### 1.20 MANUFACTURERS' INSTRUCTIONS

- A. When Contract Documents require that installation of work comply with manufacturers' printed instructions, obtain and distribute copies of such instructions to parties involved in the installation, including two copies to the Architect.
  - (1) Maintain one set of complete instructions at the job site during installation and until completion.

- B. Handle, install, connect, clean, condition, and adjust products in strict accord with such instructions and in conformity with specified requirements.
  - (1) Should job conditions or specified requirements conflict with manufacturers' instructions, consult with the Architect for further instructions.
  - (2) Do not proceed with work without clear instructions.
- C. Perform the work in accordance with the manufacturers' instructions. Do not omit any preparatory step or installation procedure unless specifically modified or exempted by the Contract Documents.

END OF SECTION 01000

## **SECTION 02825 - FENCING WORK (CHAIN LINK)**

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### **1. GENERAL**

#### **1.1 SCOPE**

- A. Furnish labor, material, services, and equipment necessary to deliver and install all metal fence **(6 foot height)** work specified herein and as indicated on the Fencing Diagram.
- B. Related work specified elsewhere:
  - (1) Gate locks (N.I.C.).
  - (2) Section 01000 - General Provisions.

#### **1.2 SHOP DRAWINGS**

- A. Submit in accordance with the conditions of the Contract.
- B. Submit shop drawings for the following:
  - (1) Chain link fencing and framing, etc.
    - (a) Certification from installer and supplier that all components of the fencing system are in compliance with ASTM F-1043.
  - (2) Chain link fabric:
    - (a) ASTM A-392 zinc coated steel chain link fence fabric.

#### **1.3 QUALIFICATIONS**

- A. All fencing system components and design shall comply with ASTM F-1043 and related ASTM reference standards referred to therein.
- B. The following manufacturers are acceptable when meeting or exceeding the requirements specified herein:
  - (1) Allied Tube and Conduit Fence Division.
  - (2) U.S.S. Cyclone Fence.
  - (3) Anchor Fence, Inc.
  - (4) Century Tube Corporation.
  - (5) Page Fence Associates.
  - (6) Reeves Southeastern Corporation.
- C. The fence installer/manufacturer shall submit the fence system design, materials and/or components in accordance with ASTM F-1043 Group IA requirements for review.
- D. Products of other manufacturers will be considered when requested in accordance with the Supplementary Conditions.

#### **1.4 QUALITY ASSURANCE**

- A. Chain link fabric, posts, and components and installation shall conform to the requirements of the CLFMI Product Manual, unless otherwise shown or specified.
- B. Manufacturer Qualifications: Company specializing in manufacturing the products specified in this section with a minimum of three (3) years documented experience.

#### **1.5 PRODUCT DELIVERY, STORAGE, AND HANDLING**

- A. Deliver materials in manufacturer's original packaging with all tags and labels intact and legible.
- B. Handle and store material in such a manner as to avoid damage.

## 2. PRODUCTS

### 2.1 POSTS, RAILS, AND BRACES

- A. All tubular and rolled form members shall comply with the provisions of ASTM F-1043 for size weight and coating of steel members. All structural and roll formed shapes shall conform to provisions of ASTM F1083 for galvanized coating.
  - (1) Conform to heavy industrial classification.
- B. End Corner, Pull Post, and Gate Post
  - (1) Shall be round tubular members designed in accordance with ASTM F-1043, but shall not be less than 2½" diameter minimum.
  - (2) For gate post leaves over 6'-0" wide, terminal post shall be standard weight pipe complying with ASTM F-900 size as recommended by the manufacturer.
- C. Line Post
  - (1) Shall be round tubular steel conforming to ASTM F-1043, but shall not be less than 2½" diameter minimum.
- D. Top and Brace Rail
  - (1) Shall be round tubular steel conforming to F-1043, but shall not be less than 1⅝" diameter minimum.
  - (2) Top rail coupling, 6" minimum in length, shall be spaced at maximum 21' centers.
- E. Post Bracing Assembly: Match top rail for horizontal braces; ⅜" diameter rod with adjustable take-up for diagonal truss.

### 2.2 CHAIN LINK FABRIC

- A. One piece fabric width, core 9 gauge, woven 2" diamond mesh with a finish of 8 gauge.
- B. Selvage Edges: Top and bottom of fabric shall have knuckled selvages.

### 2.3 GATES

- A. Fabricate gate perimeter frames according to ASTM F-900 requirements. Minimum size 1.9" diameter tubular members. Provide additional horizontal and vertical members to ensure proper gate operation and for attachment of fabric, hardware, and accessories.
- B. Assemble gate frames by welding or fittings and rivets for rigid connections. Use same fabric as for fence. Install fabric with stretcher bars at vertical edges and tie at top and bottom edges. Attach stretcher bars to gate frame at not more than 15" o.c.
- C. Provide diagonal cross-bracing consisting of ⅜" diameter adjustable length truss rods on gates where necessary to provide frame rigidity without sag or twist.
- D. Gate Hardware: Provide the following hardware and accessories for each gate.
  - (1) Hinges: Pressed steel or malleable iron to suit gate size, non-lift-off type. Provide minimum one pair of hinges for each leaf.
  - (2) Latch: Plunger-bar type to permit operation from either side of gate. Provide padlock eye as integral part of latch.
  - (3) Double gates: Provide gate stops for all double gates consisting of mushroom-type or flush plate with anchors. Set in concrete to engage the center drop rod or plunger bar. Provide locking device and padlock eyes as an integral part of the latch requiring one padlock for locking both gate and leaves.



## 2.4 FINISH

- A. Chain link fabric shall be (galvanized) zinc coated steel woven wire fence fabric conforming to ASTM A-116.
- C. All framing parts and chain link fabric shall receive organic coatings as follows:
  - (1) Fabric: 2" woven mesh fabric shall be a colored fabric. Steel core wire shall have a zinc coating and color coating shall consist of polyvinyl chloride (PVC) in accordance with ASTM F-668 and F-934.
  - (2) Framework: Posts and rails shall be galvanized and be given a polyvinyl chloride (PVC) in accordance with ASTM F-668 and F-934.
- D. PVC coating materials shall comply with ASTM F-1043 and ASTM F-934 for PVC coating.

## 2.5 MISCELLANEOUS MATERIALS AND ACCESSORIES: All accessories except tie wires shall be galvanized to comply with ASTM-A153.

- A. Post Tops: Pressed steel, or malleable iron, designed as a weathertight closure cap (for tubular posts). Provide one cap for each post and fastened to post. Where top rail is used, provide tops to permit passage of top rail.
- B. Stretcher Bars: (For tubular end, corner, pull, or gate posts only) One piece lengths equal to full height of fabric with a minimum cross-section of 3/16" x 3/4". Provide one stretcher bar for each gate and end post, and two for each corner and pull post.
- C. Stretcher Bar Bands: Heavy pressed steel, spaced not over 15" o.c. to secure stretcher bars to tubular end, corner, pull, and gate post.
- D. Wire Ties: For tying fabric to line posts, use minimum 9-gauge aluminum wire ties for tubular posts spaced 14" o.c. For tying fabric to rails and braces, use 9-gauge aluminum wire ties spaced 24" o.c. For tying fabric to tension wire, use 11 gauge hog rings spaced 24" o.c.
- E. Concrete: Provide concrete consisting of Portland cement complying with ASTM C-150, aggregates complying with ASTM C-33 and clean water. Mix materials to obtain concrete with a minimum 28-day compressive strength of 3000 psi, using at least 4 sacks of cement per cubic yard, 1" maximum size aggregate, maximum 3" slump, and 2% to 4% entrained air. Prepare to conform to ASTM C-94.
- F. All components shall be shop finished as applicable:
  - (1) Galvanized surface is treated with phosphate chemicals using 5-stage power washing.
  - (2) All components shall be factory finished with a thermosetting base coat of powdered epoxy, then a coating of thermosetting polyester power applied by electrostatic spray and baked at 350° F to 400° F.
- G. Gate and fence sections shall be all welded assemblies with exposed welds ground flush and smooth. After welding, weld zone shall be zinc metalized.

## 3. EXECUTION

### 3.1 INSTALLATION

- A. Drill holes for post footings in firm, undisturbed or compacted soil.
  - (1) Holes shall have a diameter equal to three times the diameter of the post, excavate hole depths approximately 3" deeper than post bottom, with bottom of posts set not less than 36" below surface. Excavate deeper as required for adequate support in soft and loose soils and for posts with heavy lateral loads.
  - (2) Place concrete around posts in a continuous pour, tamp for consolidation. Check each post for vertical and top alignment and hold in position during placement and finishing operations.
  - (3) Finish tops of footings with wood float at turf areas. Flush with grade. Trowel top of footing at pavement or walkways with slope or dome to direct water away from posts.

- B. Set keepers, stops, sleeves, and other accessories into concrete as required.
- C. Brace Assemblies: Install so posts are plumb when diagonal rod is under proper tension.
- D. Tension Wire: Install before stretching fabric and tie to each post with ties or clips.
- E. Fabric: Leave approximately 2" between finish grade and bottom of selvage, except where bottom of fabric extends into concrete, if noted or detailed.
  - (1) Pull fabric taut and tie to posts, rails, and tension wires. Install bottom tension wire.
  - (2) Install fabric on security side of fence, and anchor to framework so that fabric remains in tension after pulling force is released.
- F. Stretcher Bars: Thread through fabric and secure to posts with metal bands spaced not over 15" o.c.
- G. Gates: Install plumb, level, and secure for full opening without interference.
  - (1) Install ground-set items in concrete for anchorage as recommended by the fence manufacturer.
  - (2) Adjust hardware for smooth operation and lubricate where necessary.
- H. Tie Wires: Use U-shaped clip or wire, securely fastened around pipe to which attached, clasping pipe and fabric firmly. Bend ends of wire to minimize hazard to persons or clothing.
- I. Fasteners: Install nuts for tension band and hardware bolts on side of fence opposite fabric side.
- J. Install vision privacy slats as required at all locations.
- K. Remove excess soil, rock, etc., from post holes and dispose of properly. Finish grading at all holes.
- L. Spot repair/spray welded joints as required with zinc/aluminum as required. Repair PVC joints if required.
- M. Removal all debris from the site and clean the area.
- N. Test all gate openings for proper operation.

END OF SECTION 02825



**Bismarck R-V School District**

Main Campus

**BISMARCK R-V SCHOOL DISTRICT  
MASTER PLANNING  
PROJECT No. 23-46A**

**FENCING DIAGRAM - FINAL**

CUSTOM SCALE

04-01-25

- Ex. FENCE LINE (TO REMAIN)
- PROPOSED BASE BID FENCE LINE (PLAYGROUNDS / PRACTICE BALLFIELD)
- PROPOSED DOUBLE GATE
- PROPOSED SINGLE GATE

**Legend**

- Bismarck RV School District
- Bismarck R-V School District
- Donna's Country Cottage
- Feature 1
- Lady Queene
- Roy's Convenience Stores

Bismarck R-V School District

EXTEND EXISTING GRAVEL PARKING AREA & FENCE ENCLOSURE (FOR ADDITIONAL DRIVER PARKING)

RAISED / EXTENDED MANHOLE (PREVIOUSLY COMPLETED)

12'W GATE

12'W GATE w/ CASTORS

5'W GATE

12'W GATE

4'W GATE

Google Earth



400 ft