

Oak Brook Park District  
Tennis Center Front Desk Renovation  
Bid Packet



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**INSTRUCTIONS TO BIDDERS  
OAK BROOK PARK DISTRICT  
TENNIS CENTER FRONT DESK RENOVATION**

**INSTRUCTIONS TO BIDDERS**

The Oak Brook Park District and Owner are one and the same. “Architect” or “Engineer” shall mean Kluber, Inc. which shall, through its designated representative, Charli Johnsos, cjohnsos@kluberinc.com, respond to questions and provide interpretations of the Specifications for this Project.

The words "Contractor" and “Bidder” shall mean the party bidding for or entering the Contract for the performance of the Work covered by the written Specifications and Drawings, and its legal representatives or authorized agents.

**A. BID DOCUMENTS**

1. The Bid Documents may be downloaded in PDF format from the Owner’s website: <https://www.obparks.org/bids-rfps>. The Bid Documents are also available in printed format from the Administrative Office at the District’s Family Recreation Center, 1450 Forest Gate Road, Oak Brook, IL 60523, Monday - Friday, 9:00 a.m. – 5:00 p.m. Please note the printed Drawings available at the Administration Office will be on 11” x 17” paper.

The Bid Documents may also be examined at the Architect's office, located at 41 W. Benton, Aurora, IL 60506.

2. A pre-bid meeting will be held for this Project in the Family Recreation Center, 1300 Forest Gate Road, Oak Brook, IL 60523, on January 19, 2024 at 11:00 a.m.

**B. BID FORM**

1. Each bid shall be made on the "Bid Form" furnished by the District. The Bid Form shall be executed properly and all writing, including all signatures, shall be with black ink. Failure to use the Bid Form provided could result in rejection of the bid.
2. All applicable blank spaces on the "Bid Form" shall be fully completed, including the List of Subcontractors and the Bidder’s Reference List, and all amounts shall be in words as well as in figures where applicable.
3. The bid shall bear the legal name of the business organization. The signatures shall be in longhand and executed by a duly authorized official of the Bidder's organization and the name of the official and title shall be typed below the signature.
4. Erasures, interlineations, corrections, or other changes on the "Bid Form" shall be explained or noted over the signature of the Bidder. No bid submitted with deviations or reservations from the full contract called for will be considered.

5. Bidders' prices are to include the delivery of all materials; including plant, equipment, supplies, tools, scaffolding, transportation, insurances, bonds, warranties, and all other items and facilities, and the performance of all labor and services, necessary for the proper completion of the Work except as may be otherwise expressly provided in the Contract Documents. Bids shall not include federal excise tax or state sales tax for materials to be incorporated in, or totally consumed in the prosecution of, the Work. An exemption certificate will be furnished by the Park District upon request of the Bidder.
6. Bidder must acknowledge all Addenda received in the spaces provided on the Contractor Bid Form. By submitting a bid, Bidder indicates that all considerations issued by Addendum are incorporated in the bid.
7. Attached to the Bid Form will be the Contractor's Compliance and Certification Attachment/ Substance Abuse Prevention Program Certification regarding the Bidder's compliance with applicable laws. **Failure of a Bidder to complete/submit a required certification may be the basis for immediate rejection of that Bidder's bid.** The certification of the successful Bidder shall become a part of the Contract with the Park District.
8. The bids shall be sealed in an opaque envelope, marked with the name of the Bidder, the date and time of the bid, and addressed as follows:

Sealed Bid: Tennis Center Front Desk Renovation  
Project No. 23-310-1501  
Oak Brook Park District  
1450 Forest Gate Road  
Oak Brook, IL 60523
9. Bid documents shall be delivered or mailed in time for delivery to the foregoing address no later than January 31, 2024 at 11:00 a.m. Oral bids or oral modifications to bids will not be considered. It is the sole responsibility of the Bidder to see that its bid is received in proper time. **No faxed or e-mail bid or modification of a bid will be considered.** The Park District is not responsible for the premature opening of bids not marked as required. Any bid opened prematurely due to the failure of the Bidder to mark the envelope in accordance with these Bid Documents will be considered non-responsive.
10. No bid can be withdrawn prior to the opening of the bids unless a written request for any such withdrawal, showing good cause for said withdrawal, is first delivered to the District at the foregoing address prior to commencement of the opening of bids. No Bidder may withdraw a bid after opening of the bids.
11. Bids will be publicly opened on the due date.



## C. REQUIREMENTS OF BIDDERS

Bidders must be able to demonstrate that they: a) have experience in performing and have successfully performed and are still actively engaged in performing work similar in kind and scope to the Work of the Project; and b) are able to show that they have adequate laborers and materials to successfully complete the Work as indicated in the Bid Documents and within the time required by the Bid Documents. The Contractor shall not have been debarred or determined ineligible for public contracts by any governmental agency.

The following information must be attached to the bid proposal. Failure to do so may result in disqualification of the Bidder.

1. On a separate sheet, list all construction projects your organization has in progress, giving the name of the project, project description, project address, owner and telephone number, architect and telephone number, contract amount, percent complete, and scheduled completion date.

2. On the Bidder's Reference List form provided herein, list at least three (3) construction projects your organization has completed in the past five (5) years, which are comparable in scope, giving the name of the project, project description, project address, owner and telephone number.

3. On the List of Subcontractors form provided herein, provide a list of anticipated subcontractors, if any, including their firm names, addresses and telephone numbers. All subcontractors to be used shall be approved by the Owner. If the Contractor subcontracts any part of the Work for this project, the Contractor shall not under any circumstances be relieved of its liabilities and obligations; any subcontractor for this project will be recognized only in the capacity of an employee of the Contractor.

4. On a separate sheet, list all administrative proceedings and litigation filed by or against Bidder in the past five (5) years, including the name and case number, name/jurisdiction of the court or administrative agency, and a summary of each claim/case, including current status and if no longer pending, the disposition. The foregoing includes but is not limited to information regarding any proceedings and actions taken by any governmental agency to debar or disqualify the Bidder from bidding on public contracts, including the name of the agency initiating the proceeding/action, the nature of the proceeding/action, the claimed basis for the proceeding/action and the current status or disposition of the proceeding/action.

Other required submittals include: Bid Form; Contractor's Compliance and Certification Attachment/ Substance Abuse Prevention Program Certification. **Failure of a Bidder to complete/submit these documents may be the basis for immediate rejection of that Bidder's bid.**

The Park District reserves the right to require of any Bidder such information to verify the Bidder's qualifications and financial status and to withhold formal signing of the contract until such information is received.

**D. MODIFICATION OF BIDS**

Any Bidder may modify its bid by written notice (signed by the Bidder) at any time prior to the scheduled closing time for receipt of bids, provided that such written notice is received by the District prior to the closing time. Modifications of bid submittals sent by facsimile will not be permitted.

**E. EXAMINATION OF CONTRACT DOCUMENTS AND SITE**

Each Bidder shall visit the site(s) of the proposed Work and fully acquaint itself with conditions, as they exist, and shall undertake such additional inquiry and investigation as the Bidder shall deem necessary so that the Bidder may fully understand the requirements, facilities, possible difficulties and restrictions attending the execution of the Work under the Contract. Bidder shall thoroughly examine and be familiar with all of the Bid Documents including, but not limited to, the Drawings and the written Specifications. Any conflicts or discrepancies found between or among Bid Documents including, but not limited to, the Drawings and written Specifications and the site conditions, or any errors, omissions or ambiguities in the Drawings or written Specifications shall be immediately reported to the Architect and written clarification requested prior to submission of a bid.

The failure or omission of any Bidder to obtain, receive or examine any form, instrument, or information or to visit the Project site(s), and become knowledgeable with respect to conditions there existing, or to seek needed clarification shall in no way relieve any Bidder from any obligations with respect to its bid. By submitting a bid, the Bidder agrees, represents and warrants that the Bidder has undertaken such investigation as he deemed necessary, has examined the site(s) and the Bid Documents, has obtained all needed clarifications and where the Bid Documents indicate in any part of the Work, that a given result be produced, that the Bid Documents are adequate and the required result can be produced as indicated in the Specifications and Drawing(s). Once the award has been made, failure to have undertaken and completed the foregoing tasks shall not be cause to alter the original Contract or to request additional compensation.

**F. ACCEPTANCE OR REJECTION OF BIDS**

The Park District may accept the bid of, and award the contract for the Work to, the lowest responsive and responsible Bidder as determined by and in the sole discretion of the Park District.

The Owner reserves the right to (1) reject all bids; (2) reject only certain bids which are non-conforming or non-responsive to the bid requirements; (3) accept only a portion, part or specific items of Work of all and reject others, as the Owner shall in its sole discretion determine to be in its best interest; and/or (4) award the Contract to the responsible Bidder submitting the lowest bid responsive to the bidding requirements. No bid will be accepted

from or Contract awarded to any person, firm or corporation that is in arrears or is in default to the Park District upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said Park District or that has failed to perform faithfully any previous contract with the Park District.

In the event of a rejection of a portion, part, or certain items of Work of all bids, the bid of each Bidder shall automatically be deemed reduced by the amount of such rejected part or item at the unit price or other cost designated therefore by that Bidder on its submitted Contractor Bid Form. The successful Bidder so selected may not refuse to enter into a Contract with the Owner on the basis that the Owner awarded a Contract for less than all portions or items of the Work specified in the Bid Documents. The Oak Brook Park District Board of Park Commissioners reserves the right to waive any technicalities or irregularities, and to disregard any informality on the bids and bidding, when in its opinion the best interest of the Park District will be served by such actions and in accordance with applicable law.

## **G. SURETY**

All bids must be accompanied by a bid bond or bank cashier's check payable to the Oak Brook Park District for ten percent (10%) of the amount of the bid and drawn on a responsive and responsible bank doing business in the United States. All bids not accompanied by a bid security, when required, will be rejected.

The bid security of all except the three (3) lowest responsible Bidders will be returned after the decision to accept or reject bids by the Oak Brook Park District Board of Park Commissioners. The bid security of the three (3) lowest responsible Bidders will be returned after acceptance by the Park District from the successful Bidder, an acceptable Performance Bond, Labor and Materials/Payment Bond and a certificate of insurance naming the Oak Brook Park District as the certificate holder and as additional insured, and the successful Bidder has executed and returned to the Park District the Contract for the Work presented by the Park District.

Prior to beginning Work, the successful Bidder shall furnish a Performance Bond, and Labor and Materials/Payment Bond in the amount of 110% of the Contract Sum, using a form similar to the AIA-A312-2010 form, or its current equivalent, or one acceptable to Owner, cosigned by a surety company licensed to conduct business in the State of Illinois and with at least an "A" rating and a financial rating of at least "X" in the latest edition of the Best Insurance Guide. Said bond shall guarantee the faithful performance of the Work in accordance with the Contract, the payment of all indebtedness incurred for labor and materials, and guarantee correction of Work. The cost of each bond shall be included in the Contract Sum. The Bidder and all Subcontractors shall name the Park District as an obligee on all bonds. Said bonds shall meet the requirements of the Illinois Public Construction Bond Act, 30 ILCS 550/0.01 *et seq.* and any further amendments thereto. Bidder shall include in its Performance Bond and Labor and Material Payment Bond such language as shall guarantee the faithful performance of the Prevailing Wage Act as required in these Bid Documents.

The Performance Bond and Labor and Material Payment Bond will become a part of the Contract. The failure of the successful Bidder to enter into the Contract and supply the required bonds and evidence of insurance within ten (10) days after the Contract is presented for signature, or within such extended period as the Park District may grant, shall constitute a default, and the Park District may either award the Contract to the next responsible Bidder, or re-advertise for bids. In the event of a default, the Owner need not return the defaulting Bidder's bid surety and may charge against the defaulting Bidder for the full difference between the amount for the bid and the amount for which a Contract for the Work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the defaulting Bidder's bid surety, provided that the District's retention of the bid guarantee shall not preclude the District from holding the Bidder fully liable for any and all damages which are in excess of said partial liquidated damages, and which shall otherwise be incurred by the District, including reasonable attorneys' fees, arising from the Bidder's failure to enter into said Contract and to deliver the same back to the District within said ten (10) day period.

#### **H. WITHDRAWAL OF BID**

Bidders may withdraw or cancel their bids at any time prior to the advertised bid opening time by signing and submitting a request for said withdrawal. After the bid opening time, no bid shall be withdrawn or canceled for a period of sixty (60) calendar days.

#### **I. ACCEPTANCE AND CONTRACT**

Owner will award the Contract to the lowest most responsible and responsive Bidder, as determined by Owner. In considering the Bidder's responsibility, the Owner may evaluate, among other factors, the ability of the Bidder to provide experienced labor sufficient in numbers to timely and properly complete the services, conformity with the Specifications, serviceability, quality, and the financial capability of the Bidder, and the performance of the Bidder on other projects.

The Owner shall have the right to accept Alternates in any order or combination, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

Bids will be awarded to one Bidder for the entire Project or to any series of Bidders for an appropriate proportion of the Project. If specified in the Bid Form, awards will be based upon the submitted unit prices.

The acceptance of a bid will be by a Notice of Award, signed by a duly authorized representative of the Park District; no other act by the Park District shall constitute the acceptance of a bid. The acceptance of a bid by the Park District shall bind the successful Bidder to execute and perform the Work of the Contract. The successful Bidder to whom the Contract is awarded by the Park District shall sign and deliver to the Park District for execution by the Park District all required copies of the Contract, along with all required insurance and surety documents within ten (10) days after presentation to the Bidder of the

Contract for signature. In case the Bidder shall fail or neglect to do so, he will be considered as having abandoned the Contract, and as being in default to the Owner. The Owner may thereupon re-advertise or otherwise award said Contract and forfeit the Bid Security.

The Advertisement for Bids, Instructions to Bidders, General Conditions, Supplementary and/or Special Conditions, if any, Drawings, Specifications, Contractor Bid Form, Addenda, if any, Contractors Compliance and Certifications Attachment, and Substance Abuse Certification and the Prevailing Wage Determination and Supersedes Notice comprise the Bid Documents. The Bid Documents, together with the Standard Abbreviated Form of Agreement Between Owner and Contractor, AIA Document A104-2017, as modified by the Park District and included in these Bid Documents, and the Performance Bond and Labor Material Payment Bond and proof of insurance comprise the Contract Documents.

#### **J. INTERPRETATION OF THE CONTRACT DOCUMENTS**

The Park District shall in all cases determine the amount or quantity of the several kinds of Work which are to be paid for under this Contract, and shall decide all questions which may arise relative to the execution of the Contract on the part of the Contractor, and all estimates and decisions shall be final and conclusive. The Park District shall have the right to make alterations in the lines, grades, plans, forms, or dimensions of the Work herein contemplated either before or after the commencement of the Work. If such alterations diminish the quantity of the Work to be done, they shall not constitute a claim for damage or for anticipated profits on the work dispensed with, or if they increase the amount of Work, such increase shall be paid according to the quantity actually done and at the price or prices stipulated for such Work in the Contract. The Park District reserves the right to approve, an equal to or superior to product or equipment required under the Specifications, or to reject as not being and equal to or superior to the product or equipment required under the Specifications. If the Bidder is in doubt as to the interpretation of any part of the Bid Documents, or finds errors, discrepancies or omissions from any part of the Contract Documents, he must submit a written request for interpretation thereof not later than seven (7) days prior to opening of bids to the Park District. Address all communications to the Architect. If an error or omission is discovered in the Bid Documents after the bid opening, the Park District reserves the right: 1) to determine whether to require the submission of new bids; or 2) if the error or omission is of such a nature that it was reasonably discoverable upon a careful review of the Bid Documents, to award the Contract to the lowest responsive and responsible Bidder as determined by the Park District and to require that Contractor to perform the Work in accordance with an issued correction by the Park District and for the amount bid by the Contractor. Such decisions are final and not subject to recourse. Errors and omissions made by the Bidder cannot be corrected after the bid opening.

#### **K. ADDENDA**

Any interpretation, correction to, or addition to the Bid Documents will be made by written Addendum and will be delivered to each prime Bidder of record. The written Addenda constitute the only interpretations of the Bid Documents; the Park District accepts no responsibility for any other claimed interpretations or communications.

It is the responsibility of each Bidder to verify that he has received all Addenda prior to submitting a bid. It is also the responsibility of each Bidder to verify that all subcontractors and material suppliers whose prices are incorporated in the Bidder's bid are familiar with the Bid Documents in their entirety, including all Addenda issued up to the time of bid opening.

In the event a conflict or omission is discovered in the Bid Documents after the issuing of the last Addendum such that an interpretation cannot be issued by the Architect or Park District prior to bidding, the Bidder is directed to estimate on and provide the quantity and quality of material and labor consistent with the overall represented and indicated Work so as to provide all materials, equipment, labor, and services necessary for the completion of the Work in accordance with the Bid Documents.

#### **L. SUBSTITUTIONS DURING BIDDING**

Unless otherwise indicated, the use of brand names in the Specifications is used for the purpose of establishing a grade or quality. Bidders proposing to use an alternate that is equal to or superior to in every respect to that required by the Specifications must request approval for the proposed substitution by completing and submitting to the Architect the Substitution Request Form included in the Specifications at least seven (7) business days prior to the bid opening.

Additionally, Bidders requesting approval for use of an alternate must provide certification by the manufacturer that the substitute proposed is equal to or superior in every respect to that required by the Contract Documents, and that its in-place performance will be equal to or superior to the product or equipment specified in the application indicated. The Bidder, in submitting the request for substitution, waives the right to additional payment or an extension of Contract Time because of the failure of the substitute to perform as represented in the request for substitution.

The Architect may request additional information or documentation necessary for evaluation of the request for substitution in accordance with Section 01 60 00 Product Requirements of the Specifications. The Architect will notify all Bidders of acceptance of the proposed substitute by means of an Addendum to the Bid Documents. The Architect's approval of a substitute during bidding does not relieve the Contractor of the responsibility to submit required shop drawings and to comply with all other requirements of the Contract Documents, including but not limited to proper performance of all components of the Work and suitability for the uses specified.

Bids proposing alternates not previously approved by the Architect will be considered non-responsive and rejected. The Architect and Park District reserve the right to determine

whether a substituted selection, in their judgment, is equal to or better quality and therefore an acceptable alternate. Such decisions are final and not subject to recourse.

**CONDITIONS OF THE CONTRACT  
OAK BROOK PARK DISTRICT  
TENNIS CENTER FRONT DESK RENOVATION**

**GENERAL CONDITIONS**

The General Conditions are the General Provisions of the Standard Abbreviated Form of Agreement Between Owner and Contractor, AIA Document A104-2017, as modified by the Park District and included in these Bid Documents (the “General Conditions”).

**SUPPLEMENTARY CONDITIONS**

The General Conditions are hereby amended to include the following:

**1. COMMENCEMENT AND COMPLETION DATE**

The Work for the Contract shall commence on February 26, 2024, or on such other date as may be agreed upon by the parties. Contractor shall achieve Substantial Completion on or before April 30, 2024 and Final Completion on or before May 31, 2024, unless otherwise extended by agreement of the parties pursuant to the General Conditions.

**2. USE OF THE SITE**

The Contractor shall confine all equipment, the storage of materials and the operations of its workers, to limits indicated by law, ordinances, permits, or directions of the Owner and shall not unreasonably encumber the site with such materials. The site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for the Work to be performed.

**3. COOPERATION WITH UTILITIES**

The Contractor shall notify all utility companies, public and private, as necessary in advance of commencing performance of the Work. The responsibility for moving water lines, gas lines, wire lines, service connections, water and gas meter boxes, water and gas valve boxes, light standards, cable ways, signals and all other utility appurtenances which are within the limits of the proposed construction will be assumed by the Contractor, at no additional compensation.

The Contractor shall verify the location of all utilities prior to the start of construction and shall be responsible for the preservation of existing utility installation and the cost of providing precautionary supports, braces, etc. to insure against damage to said utility installation.

The cost to repair and replace any new or existing utilities damaged will be paid for by the Contractor.



It is understood and agreed that the Contractor has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for delays, inconvenience, or damage sustained by the Contractor, due to any interference from the said utility appurtenances or the operation of moving them either by the utility company or by the Contractor, or on account of any special construction methods required in performing the Work due to the existence of said appurtenances whether in their present or relocated positions.

**4. PROTECTION OF PROPERTY -SAFETY RESPONSIBILITY**

In accordance with the Specifications, the Contractor shall protect all existing property and improvements within the Project site and those adjacent to the Owner's property in a manner agreed upon between the Owner and Contractor. The Contractor shall be responsible for the repair cost of any damage created by its operations or the operations of any subcontractors.

Contractor shall comply with State and Federal regulations as outlined in the latest revision of the Federal Construction Safety Standards and with applicable provisions and regulations of Occupation Safety and Health Administration (OSHA), Standards of the William-Steiger Occupational Health and Safety Act of 1970 (revised). The Contractor and Owner shall each be responsible for their respective agents and employees.

The Contractor shall be obligated to indemnify, hold harmless and protect the Owner, its officers, employees and agents, from any actions or suits instituted as a direct or indirect result of any injury or damage consequent upon any failure to use or misuse by the Contractor, its agents and employees and any subcontractor, its agents and employees, of any ladder, support or other mechanical contrivance erected or constructed by any person or any or all kinds of equipment whether or not Owner or furnished by the Owner.

**5. INSURANCE**

**BIDDER'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT THE BIDDER CONFER WITH ITS INSURANCE CARRIER REGARDING THESE REQUIREMENTS. FAILURE TO MEET THESE REQUIREMENTS IS CAUSE FOR CANCELLATION OF THE CONTRACT.**

The successful Bidder shall obtain insurance of the types and in the amounts listed below.

**a. Commercial General and Umbrella Liability Insurance**

The successful Bidder shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 04 13, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The successful Bidder shall purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death to the extent caused by any negligent act or omission of the successful Bidder any subcontractor, anyone directly or indirectly employed by them or anyone for whose act of them may be liable.

The District, its elected and appointed officials, employees, agents and volunteers and Architect shall be included as an additional named insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. The coverage afforded the additional insureds shall apply as primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the successful Bidder. If the additional insureds have other self-insurance or insurance which is applicable to the loss, such other self-insurance or insurance shall be on an excess or contingent basis. Any self- insurance maintained by the District or insurance maintained by Architect shall be deemed excess of such Bidder's insurance and shall not contribute with it. The amount of the successful Bidder's liability under this insurance policy shall not be reduced by the existence of such other insurance.

**b. Continuing Completed Operations Liability Insurance**

The successful Bidder shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following Substantial Completion of the Work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 04 13, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

**c. Business Auto and Umbrella Liability Insurance**

The successful Bidder shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

**d. Workers Compensation Insurance**

The successful Bidder shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Such Bidder waives all rights against District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to such Bidder's activities.

**e. General Insurance Provisions**

i. Evidence of Insurance: The successful Bidder shall furnish the District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements, or failure of the District to identify a coverage deficiency from evidence that is provided, shall not be construed as a waiver of such Bidder's obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting such Bidder from entering the premises until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of the Contract entered by the parties at the District's option.

Such Bidder shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

ii. Acceptability of Insurers: All insurance companies shall maintain a rating no less than A-VII from A.M. Best, based on the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A-VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

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

**f. Subcontractors**

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

**6. INDEMNIFICATION**

To the fullest extent permitted by law, the successful Bidder shall waive any right of contribution and shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents and Architect and its employees and consultants from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the successful Bidder's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the successful Bidder, any subcontractor, anyone directly or indirectly employed by any of them

or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The successful Bidder shall similarly protect, indemnify and hold and save harmless the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of the successful Bidder's breach of any of its obligations under, or the successful Bidder's default of, any provision of the Contract.

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

Claims, damages, losses and expenses' as these words are used in the Contract shall be construed to include, but not to limited to (1) injury or damage consequent upon the failure of or use or misuse by the successful Bidder, its subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by any Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus consists of travel, long distance telephone and reproduction of documents.

Nothing contained herein shall be construed as prohibiting the District, its officers, employees or agents from defending, through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings or actions brought against them. The District's participation in its defense shall not remove the successful Bidder's duty to indemnify, defend and hold the District harmless as set forth herein.

The indemnification required hereunder shall not be limited by reason of the enumeration of insurance coverage herein provided.

The successful Bidder's indemnification of the District shall survive the termination or expiration of the Contract.

## **7. WARRANTY**

- A.** The Work performed and the materials and equipment installed under this Contract shall be in compliance with the Contract Documents and must be guaranteed by the Contractor and the Surety for a period of twenty four (24) months from Substantial

Completion against defective workmanship and material of any nature. On all material or equipment incorporated, the Contractor and its Surety must guarantee that the type, quality, design and performance will fully meet the requirements of the Specifications and Drawings.

- B. The Contractor shall provide the Owner with manufacturer's warranties for all materials and equipment installed under the Contract.

## **SPECIAL CONDITIONS**

1. The Tennis Center shall remain open to the public for the duration of the Project. As such, Contractor shall maintain the Project site in a manner that ensures safe access to the Tennis Center amenities by the public, Park District staff and others requiring access to the Tennis Center. 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.

**BID FORM  
OAK BROOK PARK DISTRICT  
TENNIS CENTER FRONT DESK RENOVATION**

(Please complete in ink, and print or type)

TO: Oak Brook Park District  
1450 Forest Gate Road  
Oak Brook, IL 60523

FROM: \_\_\_\_\_  
NAME OF BIDDER

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
CITY STATE ZIP

\_\_\_\_\_  
PHONE

\_\_\_\_\_  
EMAIL ADDRESS

**FOR:** Tennis Center Front Desk Renovation

By submission of its bid, the Bidder acknowledges, agrees, represents, declares and warrants:

- A. That Bidder has carefully examined the written Specifications and Drawings and is thoroughly familiar therewith, and that the Bidder has visited the site of the proposed Work to arrive at a clear understanding of the conditions under which the Work is to be done, and that the Bidder has compared the site with the Drawings and Specifications and has satisfied itself as to all conditions affecting the execution of the Work;
- B. That all modifications have been submitted with this bid;
- C. That the Bidder has checked carefully the bid figures and understands that it shall be responsible for any errors or omissions based on these Specifications and alternates as submitted on the Bid Proposal Form;
- D. That it is understood and agreed that the Oak Brook Park District reserves the right to accept or reject any or all bids, or to combine or separate any section or work, and to waive any technicalities;
- E. To hold the bid open for sixty (60) days subsequent to the date of the bid opening;
- F. To enter into and execute a Contract with the Owner within ten (10) days after the date of the Notice of Award, if awarded on the basis of this bid, and in connection therewith to:
  - (a) Furnish all bonds and insurance required by the Contract Documents;
  - (b) Accomplish the Work in accordance with the Contract Documents; and
  - (c) Complete the Work within the time requirements as set forth in the Bid Documents.

- G. That if this bid is accepted, the Bidder is to provide all of the necessary equipment, tools, apparatus, labor, and other means of construction, and to do all of the Work and to furnish all of the materials specified in the Bid Documents in the manner and at the time therein prescribed, and in accordance with the requirements set forth;
- H. To commence Work as specified in the Instructions to Bidders, and to prosecute the Work in such a manner, and with sufficient materials, equipment and labor as will ensure its completion within reasonable time, it being understood and agreed that the completion within such reasonable time is an essential part of this Contract;
- I. That any and all prices stated in the proposal include all costs of labor, materials, equipment, insurance, bonds, overhead and profit, and any and all other costs normal to doing business.

**The undersigned Bidder agrees to perform the Work for the following lump sum price:**

Base Bid	Amount
	\$

**Total Lump Sum Base Bid:** \_\_\_\_\_

Alternate No. 1	Amount
Demolition of existing casework and flooring demolition and necessary flooring work indicated in keynotes 2.476, 2.467, 12.590 & 9.3.10 on Drawing number A300.	\$
Cash Allowance for Systems Furniture (Include this Amount for Alternate No. 1; see Specifications, Section 012100 Allowances, 1.04)	\$20,000

**Total Alternate No. 1 Including Cash Allowance:** \_\_\_\_\_

Bids will be awarded to one Bidder for the entire Project or to any series of Bidders for an appropriate proportion of the Project. The Owner shall have the right to accept Alternates in any order or combination, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

The undersigned Bidder hereby acknowledges the receipt of the following addenda (if any) distributed by the Park District.

Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Date: \_\_\_\_\_

The Work for the Contract shall commence on February 26, 2024, or on such other date as may be agreed upon by the parties. Substantial Completion of the Project shall be on or before April 30, 2024 and Final Completion of the Project shall be on or before May 31, 2024, unless otherwise extended by agreement of the parties pursuant to the General Conditions.

The undersigned Bidder agrees that if this bid is accepted by the Park District, it will perform all Work in accordance with the requirements of the Contract.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.



\_\_\_\_\_  
Full Name of Bidder (Print)

- (a) Individual ( )
- (b) Partnership ( )
- (c) Corporation ( )

Name and Title of Authorized Agent  
if Corporation or Partnership (Print): \_\_\_\_\_

\_\_\_\_\_  
Full Name and Title of Bidder (Signature)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Email

Phone \_\_\_\_\_

**LIST OF SUBCONTRACTORS**

Bidder submits a list of subcontractors for each trade relative to the Work to be performed under the Contract with the District, and agrees that if selected the successful Contractor, the Bidder will promptly confer with the District's agents on the question of which subcontractors the Bidder proposes to use, including submission of their qualifications. It is agreed that the District may substitute for any proposed subcontractor, another subcontractor for the trade against whose standing and ability the Bidder makes no objection in writing, and the Bidder will use all such finally selected subcontractors at the amount named in their respective subcontracts, and be in every way responsible for them and their work as if they had been originally named in the Bidder's bid, the unit, total and alternate Contract prices being adjusted to confirm thereto.

Subcontractor Name & Address                      Classification of Work                      Amount of Subcontract

1.		
2.		
3.		
4.		

**BIDDER’S REFERENCE LIST**

Each Bidder must list the name, address, phone number and project name for at least three (3) projects performed for governmental entities of similar scope and complexity as this Project in the past five (5) years. Bidder may include, as a separate attachment, additional information or references on projects completed.

1.	_____	
	Name of Park District, School District, or Municipality	
	_____	
	Contact Person	
	_____	
	Phone Number	E-Mail
	_____	
	Description of Work performed	Project Value
	_____	
2.	_____	
	Name of Park District, School District, or Municipality	
	_____	
	Contact Person	
	_____	
	Phone Number	E-Mail
	_____	
	Description of Work performed	Project Value
	_____	
3.	_____	
	Name of Park District, School District, Municipality	
	_____	
	Contact Person	
	_____	
	Phone Number	E-Mail
	_____	
	Description of Work performed	Project Value
	_____	

## CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

**Note: The following certifications form an integral part of the Agreement between the Owner and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by Owner.**

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this Project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds or the development or construction of public works, buildings or facilities; and 5) steel products procurement.
- C. All contracts for this Project are subject to the provisions of the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged in the Work. Contractor shall pay prevailing rates of wages in accordance with the Illinois Department of Labor's wage determination and any subsequent determinations issued by the Illinois Department of Labor, all in accordance with applicable law. These revisions may be accessed by computer at <http://labor.illinois.gov/>. Contractor is responsible for determining the applicable prevailing wage rates at the time of bid submission and at the time of performance of the Work. Failure of Contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. Contractor shall also comply with all other requirements of the Act including without limitation those pertaining to inclusion of required language in subcontracts, job site posting, maintenance and submission of certified payroll records and inspection of records. Contractor is not barred from entering into public contracts under Section 11a of the Illinois Prevailing Wage Act due to its having been found to have disregarded its obligations under the Act.
- D. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers or owners of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Owner, immediately in writing, if it occurs during the bidding process, or otherwise prior to entering into the Contract therewith.

- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. (i) Contractor's bid proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any bid or proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Owner has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Owner and the Owner's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Owner and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- H. Contractor knows and understands the Equal Employment Opportunity Clause administered by the Illinois Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.
- I. Neither Contractor nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act.
- J. Contractor is not barred from contracting with the Owner because of any delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Owner, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- K. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- L. Contractor knows, understands and acknowledges its obligations under the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* A true and complete copy of Contractor's

Substance Abuse Prevention Program Certification is attached to and made a part of this Contractor Compliance and Certification Attachment.

- M. The Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 et. seq.) and, upon request of the Oak Brook Park District’s designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

CONTRACTOR

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

STATE OF \_\_\_\_\_ )  
  )SS  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that \_\_\_\_\_ appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

(SEAL)

**SUBSTANCE ABUSE PREVENTION PROGRAM CERTIFICATION**

The Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq., (“Act”) prohibits any employee of the Contractor or any Subcontractor on a public works project to use, possess or be under the influence of a drug or alcohol, as those terms are defined in the Act, while performing work on the project. The Contractor/Subcontractor [**circle one**], by its undersigned representative, hereby certifies and represents to the Oak Brook Park District that [**Contractor/Subcontractor must complete either Part A or Part B below**]:

A. The Contractor/Subcontractor [**circle one**] has in place for all of its employees not covered by a collective bargaining agreement that deals with the subject of the Act a written substance abuse prevention program, a true and correct copy of which is attached to this certification, which meets or exceeds the requirements of the Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 et seq. [**Contractor/Subcontractor must attach a copy of its substance abuse prevention program to this Certification.**]

\_\_\_\_\_  
Name of Contractor/Subcontractor (print or type)

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_ Dated: \_\_\_\_\_

B. The Contractor/Subcontractor [**circle one**] has one or more collective bargaining agreements in effect for all of its employees that deal with the subject matter of the Substance Abuse Prevention on Public Works Projects Act, 820 ILCS 265/1 et seq.

\_\_\_\_\_  
Name of Contractor/Subcontractor (print or type)

\_\_\_\_\_  
Name and Title of Authorized Representative (print or type)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_ Dated: \_\_\_\_\_

**IMPORTANT NOTICE OF RESPONSIBILITY FOR PERIODIC REVISIONS TO PREVAILING WAGE RATES**

Revisions of the Prevailing Wage Rates are made periodically by the Illinois Department of Labor (IDOL). As required by the Illinois Prevailing Wage Act, the contractor/subcontractor has an obligation to check IDOL's web site for revisions to prevailing wage rates. These revisions may be accessed by computer at <http://labor.illinois.gov/>. Bidders and contractors performing work on this Project are responsible for determining the applicable prevailing wage rates at the time of bid submission and performance of the Work. Failure of a bidder/contractor to make such determination shall not relieve it of its obligations in accordance with the Contract Documents. In consideration for the award to it of the contract for this Project, the contractor agrees that the foregoing notice satisfies any obligation of the public body in charge of this Project to notify the contractor of periodic changes in the prevailing wage rates and the contractor agrees to assume and be solely responsible for, as a material obligation of the contractor under the contract, the obligation to determine periodic revisions of the prevailing wage rates, to notify its subcontractors of such revisions, to post such revisions as required for the posting of wage rates under the Act, and to pay and require its subcontractors to pay wages in accordance with such revised rates.



# Owner/Contractor Agreement

 **AIA**<sup>®</sup> Document A104<sup>®</sup> – 2017

**Standard Abbreviated Form of Agreement Between Owner and Contractor**

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

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

Oak Brook Park District  
1450 Forest Gate Road  
Oak Brook, IL 60523

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

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

Oak Brook Park District Tennis Center Front Desk Renovation  
1300 Forest Gate Road  
Oak Brook, IL 60523

This Project includes construction offices and a storage room at the Oak Brook Park's District Tennis Center, and all other incidental and collateral work necessary to complete the Project in accordance with the Contract Documents.

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

Kluber, Inc.  
41 W. Benton  
Aurora, IL 60506

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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### ARTICLE 1 THE WORK OF THIS CONTRACT

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

### ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Check one of the following boxes.)*

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)  
February 26, 2024

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

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

**§ 2.3 Substantial Completion**

**§ 2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check the appropriate box and complete the necessary information.)

- Not later than ( ) calendar days from the date of commencement of the Work.
- By the following date: April 30, 2024

**§ 2.4 Final Completion**

**§ 2.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:  
(Check the appropriate box and complete the necessary information.)

- Not later than ( ) calendar days from the date of commencement of the Work.
- By the following date: May 31, 2024

**§ 2.3.2** Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
NA	

**§ 2.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

**ARTICLE 3 CONTRACT SUM**

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

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

Section 3.4 below

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

§ 3.2 The Stipulated Sum shall be (\$ ), subject to additions and deductions as provided in the Contract Documents.

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

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

Item	Units and Limitations	Price per Unit (\$0.00)
NA		

§ 3.2.3 Allowances, if any, included in the stipulated sum:  
(Identify each allowance.)

Item	Price
------	-------

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

(Paragraphs deleted)

1. In the manner agreed to by the Parties, or in the absence of agreement then the combined allowance for overhead and profit in connection with changes to the Work shall be the lesser of the amount, if any, included in the Contractor's bid proposal, or the following:

(Paragraphs deleted)

- a. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or

(Paragraphs deleted)

- b. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent (2%) of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.

(Paragraphs deleted)

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

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

contemplated by the Contract Documents or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associates with such overtime shall be borne by the Contractor.

**§ 3.5 Liquidated damages, if any:**

*(Insert terms and conditions for liquidated damages, if any.)*

NA

**ARTICLE 4 PAYMENT**

**§ 4.1 Progress Payments**

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

**§ 4.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 4.1.3** Provided that an Application for Payment, which is in proper form and accompanied by the required supporting documents and submittals, in form and substance required by the Contract Documents, is received by the Architect, certified by Architect and not subsequently nullified by Architect, the Owner shall make payment of the certified amount to the Contractor in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

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

**§ 4.1.4** For each progress payment made prior to Final Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)*

10%

Upon 50% completion of the Contract, Owner will reduce the retainage to 5%. For each progress payment made after 50% completion of the Contract, the Owner may withhold retainage from the payment otherwise due as follows: 5% of any subsequent payment made under the Contract.

Contractor and all subcontractors shall comply with the retainage limits as set forth in the Public Construction Bond Act, 30 ILCS 550/1 *et seq.*

**§ 4.1.5** Payments due and unpaid under the Contract, and any penalties associated with the same, shall be paid in accordance with the provisions of, the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.*

*(Paragraph deleted)*

**§ 4.2 Final Payment**

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

- .1 the Contractor has achieved Final Completion of the Work, including Final Completion for Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 15.7.1.

§ 4.2.2 Subject to § 4.2.1, the Owner's final payment to the Contractor shall be made in compliance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq* after the Architect has issued the final Certificate for Payment and Owner has approved the same.

**ARTICLE 5 DISPUTE RESOLUTION**

**§ 5.1 Binding Dispute Resolution**

Unless Owner requires non-binding mediation, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

- Arbitration pursuant to Section 21.6 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

**ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS**

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

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 Intentionally Omitted.  
(Paragraph deleted)

§ 6.1.3 The Supplementary and other Conditions of the Contract are those included in the Project Manual dated January 15, 2024.  
(Table deleted)

§ 6.1.4 The  
(Paragraphs deleted)  
Specifications are those included in the Project Manual dated January 15, 2024.

(Table deleted)  
§ 6.1.5 The Drawings are those included in the Project Manual dated January 15, 2024.  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)  
(Table deleted)

§ 6.1.6 The Addenda, if any:

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

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

- .1 Other Exhibits:  
(Check all boxes that apply.)

(Paragraph deleted)

- AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

- The Sustainability Plan:

Title	Date	Pages
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[ X ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Project Manual		1/15/2024	

2 Other documents, if any, listed below:

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

- a. Project Manual for Tennis Center Front Desk Renovation, dated January 15, 2024, incorporated herein by reference.
- b. Contractor's Proposal, dated , attached to and incorporated in this Agreement as **Exhibit A**.
- c. Contractor's Compliance and Certification, a copy of which is attached to and incorporated in this Agreement as **Exhibit B**.
- d. Performance Bond, Labor Material Payment Bond and Maintenance Bond, copies of which are attached to and incorporated as part of this Agreement by reference.

## ARTICLE 7 GENERAL PROVISIONS

### § 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

### § 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

### § 7.3 The Work

The term "Work" means the construction and services 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.

### § 7.4 Instruments of Service

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

### § 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Contractor, Subcontractors, Sub-subcontractors, and 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.



**§ 7.5.2** The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, if applicable, 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 this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

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

**§ 7.6 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. If applicable, the parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

**§ 7.7 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, if completed, 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.

**§ 7.8 Severability**

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.

**§ 7.9 Notice**

**§ 7.9.1** Except as otherwise provided in Section 7.9.2, 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 to the designated representative of the party to whom the notice is addressed in person, by mail, by overnight courier, or by electronic transmission, with the sending party retaining confirmation of receipt.

**§ 7.9.2** Notice of Claims 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 and is delivered in person, by certified or registered mail, return receipt requested, by overnight courier providing proof of delivery, or by email transmission with the sending party retaining confirmation of receipt.

For purposes of both 7.9.1 and 7.9.2, notices personally delivered shall be deemed given on the date of delivery, notices sent by certified mail shall be deemed delivered the second business day following deposit in the mail, notices sent by overnight courier shall be deemed delivered the next business day following deposit with the carrier, and notices sent by email transmission shall be deemed given on the date of transmission if sent on or before 5:00 PM on a business day, or, if later, the next business day.

*(Paragraphs deleted)*

**ARTICLE 8 OWNER**

**§ 8.1 Information and Services Required of the Owner**

**§ 8.1.1** Intentionally omitted.

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

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§ 8.1.3 Subject to the Contractor's duties and obligations under the Contract Document and § 9.1.1 of this Agreement, 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.

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

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

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, material or equipment so as to be able to complete the Work within the Contract Time, or fails to pay subcontractors or material suppliers timely or to remove and discharge within ten days any lien filed upon the Owner's property or funds by anyone claiming by, through or under the Contractor, or disregards the instructions of the Architect or Owner when based on the requirements of the Contract Documents, or otherwise fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a duty under or comply with a provision of the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under Section 8.2 thereof, the Owner may, without prejudice to any other remedies the Owner may have, correct such deficiencies, default or neglect and may deduct the actual cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. Architect may, pursuant to Section 15.4.3, 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 the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. 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 21.

### ARTICLE 9 CONTRACTOR

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

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

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labor, materials, supplies, tools, equipment and professional services necessary to complete the Work in the manner and within the cost and time frame indicated by the Contract Documents.

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

**§ 9.1.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, 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.

**§ 9.1.3** Except as otherwise required by the Contract Documents, 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.

## **§ 9.2 Supervision and Construction Procedures**

**§ 9.2.1** The Contractor shall supervise and direct the Work when being performed, using the Contractor's best skill and attention under the supervision of an approved site superintendent or foreman capable of communicating clearly with the Architect and the Owner in English. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

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

## **§ 9.3 Labor and Materials**

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

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

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

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

§9.3.5 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect, Owner's representative or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall not be included in the Work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulations, the Architect or Owner's representative with the Owner's approval may require that other materials or equipment of equal kind and quality be provided at no additional cost to the Owner.

§ 9.3.6 The Contractor shall carefully inspect all materials delivered on and to the Project site and reject defective materials without waiting for the Architect or Owner to observe the materials. Contractor shall be responsible for and liable for any materials purchased for the Project and not yet paid for by Owner.

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

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

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

#### § 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work of persons other than Contractor or subcontractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner. Inability, failure or refusal of the Subcontractor or supplier responsible for the defective materials, equipment or Work to correct the same shall not excuse the Contractor from performing under the warranty. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials being furnished.

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by the Contractor. All warranties shall be addressed to the Owner and delivered to the Owner upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in this Agreement or elsewhere in the Contract Documents, or in any Certificate of Substantial or Partial Completion approved by the Owner and Contractor and/or subcontractor, as applicable, all warranties shall

become effective on the date of Substantial Completion of the entire Work unless otherwise provided in any Certificate of Partial or Substantial Completion approved by the Owner and the Contractor or Subcontractor, as applicable, but only with respect to warranties for that specific portion of the Work, and shall run for a twenty-four (24) month period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. The Contractor shall consult with the Owner prior to the submission of any application to the appropriate permitting agency or authority in order to afford Owner the opportunity to obtain a waiver or reduction of any fees or costs associated therewith.

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

#### **§ 9.5 Taxes**

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

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

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

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

#### **§ 9.7 Allowances**

**§ 9.7.1** The Contractor shall include in the Contract Sum all allowances stated in Section 3.2.3; such allowances are for Project budget purposes only. In the event Owner directs the use of an allowance, or a portion thereof, a Change Order will be issued for the same. The amount of the Change Order shall reflect the Contractor's actual costs. Any portion of the allowance that remains when the Work is completed belongs to the Owner.

**§ 9.7.2** Any contingencies included for the Project budget will be an Owner contingency and shall belong solely to the Owner for the purpose of being allocated towards stipulated additional work and for certain unanticipated costs resulting from acceleration in the Work, regulatory changes, concealed conditions, and other unforeseen causes as approved by Owner and itemized in an executed Change Order. Any portion of the Owner's contingency that remains when the Work is completed belongs to the Owner.

#### **§ 9.8 Contractor's Construction Schedules**

**§ 9.8.1** 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 not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

#### § 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, 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. The Work shall be in accordance with approved submittals.

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

§ 9.9.3 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 or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.9.4 Contractor's requests for information shall be made in a form approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

#### § 9.10 Use of Site

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

##### § 9.10.1 Parking & Traffic.

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

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

§ 9.10.2 Fencing. Contractor will be responsible for erecting and maintaining construction fencing around the limits of the Project site at all times of construction in accordance with applicable law and the Contract Documents. Failure to erect or maintain this fencing will result in the correction of the problem by the Owner at the expense of the Contractor, and may include, but are not limited to, the cost of any materials and staff time. This fence must be installed and fully erected before construction operations beginning and tied-up at the end of each working day.

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

**§ 9.11 Cutting and Patching**

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

**§ 9.12 Cleaning Up**

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

**§ 9.12.1** 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.

**§ 9.13 Access to Work**

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

**§ 9.14 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.

**§ 9.15 Indemnification**

**§ 9.15.1** To the fullest extent permitted by law, the Contractor waives any rights of contribution against, and shall indemnify and hold harmless the Owner and its officers, officials, employees, volunteers and agents and the Architect and its employees and consultants from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs) and economic or consequential damages arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Owner, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Contract.

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



Claims, damages, losses and expenses' as these words are used in the Contract shall be construed to include, but not to be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by any Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus consists of travel, long distance telephone and reproduction of documents.

Nothing contained herein shall be construed as prohibiting the Owner, its officers, employees or agents from defending, through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings or actions brought against them. The Owner's participation in its defense shall not remove the Contractor's duty to indemnify, defend and hold the Owner harmless as set forth herein.

The indemnification required hereunder shall not be limited by reason of the enumeration of insurance coverage herein provided.

The Contractor's indemnification of the Owner shall survive the termination or expiration of the Contract.

**§ 9.15.2** In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

**§ 9.16** 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 seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and the Contract Sum or time for performance of the Work shall not be adjusted. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 21.

## **ARTICLE 10 ARCHITECT**

**§ 10.1** 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, unless otherwise modified in writing in accordance with other provisions of the Contract.

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

**§ 10.3** The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and



programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 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.

§ 10.5 Based on the Architect's evaluations of the quality and progress of the Work and 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. The Architect shall conduct inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor.

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

§ 10.7 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 the Contractor's submittals by the Architect 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. 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.

§ 10.8 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 will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

§ 10.10 The Architect will review and respond in writing to the Contractor's requests for information about the Contract Documents. The Architect's response to each request 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 11 SUBCONTRACTORS

§ 11.1 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.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, with its bid proposal, shall notify the Owner and Architect in writing of the name, trade and subcontract amount of each Subcontractor and supplier proposed for

each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's written list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

§ 11.4 All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract and that the Owner shall have the right to enforce the Subcontractor's obligations thereunder after the occurrence of a default under the Contract by the contractor. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their representatives proposed Sub-subcontractors.

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

## ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The 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.

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

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

§ 12.4 The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction or to property of the Owner or of the Separate Contractor as provided in Section 16.1.

#### ARTICLE 13 CHANGES IN THE WORK

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

§ 13.1.1 In order to evaluate proposals for changes to the Work, the Contractor shall submit a complete itemization of all costs, including hours of labor, quantities of materials, amounts of subcontracts, etc., separately defining Work deleted and Work added. In no case will a lump sum proposal be approved without such itemization.

§ 13.1.2 The combined allowance for overhead and profit in connection with changes to the Work other than changes where adjustments to the Contract Sum are calculated based on unit prices, shall be calculated as provided in Section 3.2.4. In calculating the allowance, the cost of performance and payment bonds shall be excluded. There shall be no allowance and no increase in the Contract Sum for any increase in the actual cost to the Contractor of the performance bond and the payment bond resulting from additional changes to the Work. Likewise, there shall be no decrease in the Contract Sum for any decrease in the actual cost to the Contractor of the performance bond and the payment bond resulting from any deductive changes to the Work.

§ 13.1.3 Reserved.

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

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

Methods used in determining adjustments to the Contract sum may include those listed in Section 13.2.2. Notwithstanding any provision to the contrary in the Contract Documents, the overhead and profit for Contractor and Subcontractors on any Change Order or Construction Change Directive shall be determined as specified in Section 3.2.4. No Change Order shall be approved or paid unless preceded by a written direction for the Change Order is provided by the Owner. This requirement cannot be waived by conduct, custom, or practice with respect to this Project or other projects. There shall be no implied or constructive change orders.

§ 13.2 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect and directed to the Contractor, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating

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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.

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

§ 13.2.2 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 13.2.5.

§ 13.2.3 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.

§ 13.2.4 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.

§ 13.2.5 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable amount for overhead and profit as set forth in Section 3.2.4. In such case, and also under Section 13.2.2.3, 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 13.2.5 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all insurance, and permit fees related to the Work; and
5. Overtime when specifically authorized by the Owner and not attributable to delays caused by the Contractor or Subcontractor will be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment. Overhead and profit will not be paid by the Owner for overtime. Contractor shall submit detailed itemized breakdowns of quantities and unit costs, including overhead and profit as separate items with response to request for price.

§ 13.2.6 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

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on the basis of net increase, if any, with respect to that change; in such situations, if the amount of either the credit or the addition is in dispute, the amount of the other, non-disputed item may not be included in the Application for Payment.

§ 13.2.6 Reserved.

§ 13.2.7 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation of and execution of an appropriate Change Order.

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

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 9.16.

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

§ 13.6 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents and applicable law. In the event Contractor submits a Claim for an increase in the Contract Sum pursuant to Sections 21.2.1, Contractor shall provide written notice to the Owner before proceeding to execute the Work that is the subject of the Claim. Contractor shall not perform any Work associated with the Claim until approved by written Change Order by the Owner. Accordingly, no course of conduct or dealing between the parties, nor any express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched shall be the basis of any claim to an increase in the Contract Sum or change in the Contract Time.

#### ARTICLE 14 TIME

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

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

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

§ 14.4 The date of Substantial Completion and Final Completion are the dates certified by the Architect and approved by Owner in accordance with Section 15.6.3. The date of Final Completion is defined in Section 22.4. The Contractor shall carry the Work forward regularly, diligently, uninterruptedly and expeditiously and in a good workmanlike and professional manner at such a rate of progress and with an adequate work force as will insure the completion of the Work in accordance with the Contract Documents by the date established in the Contract. It is expressly understood and agreed by and between Contractor and Owner that the time for completion of the Work is a reasonable time, taking

into consideration the average climatic range, usual industrial conditions, and all other conditions and actors prevailing in this locality.

**§ 14.5** An extension of the Contract Time shall be the sole remedy of Contractor for delays in the commencement, prosecution or completion of the Work, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work. In the event of such a delay, the Contract Time shall be extended for such reasonable time as the Architect may determine and as approved by Contractor and Owner; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

**§ 14.5.1** Contractor agrees that it shall make no claims against Owner for damages, charges, interest, loss opportunity or productivity costs, additional costs or fees incurred by reason of delays or suspension of work pursuant to Section 14.5. Contractor's sole and exclusive remedy for delays, stoppage, or suspension of the Work pursuant to Section 14.5 is an extension of Contract Time equal to the duration of the delay, stoppage, or suspension to allow the Contractor to complete its Work under this Agreement.

**§ 14.5.2** If conditions, events or circumstances occur which may cause a delay in the progress of the Work, Contractor shall promptly notify Architect within ten (10) days after the first occurrence of such condition, event or circumstance, describing in reasonable detail the nature thereof and an estimate of cost and of probable effect of delay on progress of the Work. Failure of Contractor to provide such notice shall constitute a complete waiver and release by Contractor of any claim of entitlement to an extension in the Contract Time or increase in the Contract Sum.

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

**§ 14.5.4** In addition to liquidated damages set forth elsewhere in the Contract Documents, if any, the Contractor shall reimburse the Owner for all Architect's fees for additional services necessitated by (1) Contractor's failure to achieve Substantial Completion within the time established in the Contract Documents; (2) for more than one inspection for Substantial Completion; and (3) for more than one inspection for Final Completion

## **ARTICLE 15 PAYMENTS AND COMPLETION**

### **§ 15.1 Schedule of Values**

**§ 15.1.1** Where the Contract is based on a Stipulated Sum pursuant to Section 3.2, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated 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 of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 15.1.2** The allocation of the Stipulated Sum under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

### **§ 15.2 Reserved.**

*(Paragraphs deleted)*

**§ 15.3 Applications for Payment**

**§ 15.3.1** At least fifteen 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. 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. Until Final Completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. No interest will be paid on retention amounts.

**§ 15.3.2** Reserved.

**§ 15.3.3** Unless approved in advance by the Owner in writing, payments shall be made on account of materials and equipment incorporated in the Work. 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.

**§ 15.3.4** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

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

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

- (i) All waivers (partial and final) shall include language as applicable indicating either that:
  - a. all material were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
  - b. materials were provided by the following suppliers for whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

**§ 15.4 Certificates for Payment**

**§ 15.4.1** The Architect will, after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

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§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, but not to Contractor, based on the Architect's evaluations 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 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. The issuance of a Certificate for Payment will further constitute a representation to the Owner but not to the Contractor that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.4.3 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 15.4.2 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 15.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

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

§ 15.4.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. No interest will be paid on amounts withheld.

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

### § 15.5 Progress Payments

§ 15.5.1 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. This provision is not to be construed as a "conditional payment" or "pay when paid" clause. In the event that payment to the Contractor is delayed without fault of the Subcontractor, payment to the Subcontractor shall be made within a reasonable time after work is properly performed by a Subcontractor irrespective of any delay in payment to the Contractor.

§ 15.5.2 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted



Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

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

§ 15.5.4 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.

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

#### § 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is completed in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and has been accepted by Owner to receive all required occupancy permits.

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

§ 15.6.2 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. The Contractor shall proceed promptly to cause all items on the Punch list to be completed and corrected without waiting for the Architect and Owner to make an inspection. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's Punch List, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses an item, whether or not included in the Contractor's Punch List, which is not in accordance with the Contract Documents and is necessary for Owner's occupancy or utilization of the Work, the Contractor shall before issuance of a Certificate of Substantial Completion, complete such items upon notification from the Architect and Owner. The cost of this and any additional inspections required to establish Substantial Completion due to the failure of the Contractor to properly complete all items of the Work necessary for the Owner's use or occupancy of the Work shall be charged to the Contractor. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion to the Owner for review and concurrence by the Owner which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the Punch List accompanying the Certificate which shall not exceed a period of thirty (30) days. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof with the exception of the items of Work contained in the Punch List accompanying the Certificate of Substantial Completion. With respect to Work enumerated on the Punch List, the guarantee or warranty period shall commence upon Contractor's completion and Owner's approval of the Punch List items.

§ 15.6.4 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.

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**§ 15.7 Final Completion and Final Payment**

**§ 15.7.1** 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Architect has advised Owner of that finding and Owner has not advised Architect of any objection to such finding, the Architect will promptly issue a final Certificate for Payment to the Owner but not the Contractor stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Owner's failure to object to, and the Owner's acceptance of, the Architect's findings and/or certifications hereunder shall not constitute Owner's acceptance of Work not complying with the Contract Documents, or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

**§ 15.7.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) all outstanding and final waivers of lien and sworn affidavits; (2) 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, (3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (4) 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, (5) consent of surety, if any, to final payment (6) documentation of any warranties, such as manufacturers' warranties or specific Subcontractor warranties, operating manuals and all other documents required to be furnished to Owner pursuant to the Contract Documents prior to final payment (7), 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 Owner: (a) may allow the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance and, 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; or (b) withhold from payment to the Contractor the amount claimed due by the Subcontractor. The Owner reserves the right but does not assume any obligation to issue payment directly a Subcontractor or to issue dual payee checks to the Contractor and the Subcontractor in the event of a dispute.

**§ 15.7.3**

*(Paragraphs deleted)*

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

**§ 15.7.4** Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee.

**ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY**

**§ 16.1 Safety Precautions and Programs**

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

- .1 employees 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.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 12.4, 16.1.2 and 16.1.3. 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 by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15. The Owner reserves the right to restore any such property and deduct from payments then or thereafter due Contractor the cost of restoring such property, including compensation to the Owner for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Owner.

### § 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of 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. 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. By Change Order, the Contract Time shall be equitably extended.

§ 16.2.2 The Owner shall not be responsible under this Section 16.2 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 procurement, delivery, unloading, loading, stockpiling, storing, preparing, installing, use and/or handling of such materials or substances (collectively, "handles").

§ 16.2.3 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 16.2.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

## ARTICLE 17 INSURANCE AND BONDS

### § 17.1 Contractor's Insurance

§ 17.1.1 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 this Section 17.1 and in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Contractor shall procure insurance from insurance companies that have obtained A.M. Best ratings no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems

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unacceptable. Failure to maintain the required insurance may result in termination of the Contract at Owner's option. Owner shall have the right, but not the obligation, of prohibiting Contractor or any Subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 18.4, unless a different duration is stated below:

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following Substantial Completion of the Work.

**§ 17.1.2** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$ 2,000,000 ) each occurrence, Two Million Dollars (\$ 2,000,000 ) general aggregate, which shall apply separately to this project, and Two Million Dollars (\$ 2,000,000 ) each occurrence for products-completed operations hazard for at least three years following Completion of the Work, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 9.15.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 04 13, or a substitute form providing equivalent coverage, and shall also cover liability arising from premises, operations, independent contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract)

The Owner, its elected and appointed officials, employees, agents and volunteers and Architect shall be included as an additional named insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. The coverage afforded the additional insureds shall apply as primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other self-insurance or insurance which is applicable to the loss, such other self-insurance or insurance shall be on an excess or contingent basis. Any self-insurance maintained by the Owner or insurance maintained by Architect shall be deemed excess of such Contractor's insurance and shall not contribute with it. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

Contractor shall purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death to the extent caused by any negligent act or omission of the Contractor any subcontractor, anyone directly or indirectly employed by them or anyone for whose act of them may be liable

**For Contractor's Continuing Completed Operations Liability Insurance:**

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 4 13, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

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Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

§ 17.1.3 Automobile Liability covering vehicles owned by the Contractor, hired, and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars ( \$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Business auto insurance shall be written Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

§ 17.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 17.1.2 and 17.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 17.1.5 Workers' Compensation

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's Work.

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars ( \$ 1,000,000 ) each accident, One Million Dollars ( \$ 1,000,000 ) each employee, and One Million Dollars ( \$ 1,000,000 ) policy limit.

§ 17.1.7 Intentionally deleted.

§ 17.1.8 Intentionally deleted.

§ 17.1.9 Intentionally deleted.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) within 10 days' upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 17.1.1 or upon Owner's written request for the same. The certificates will show the Owner, its elected and appointed officials, employees, volunteers and agents and Architect as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, its elected and appointed officials, employees, volunteers and agents and Architect for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's

operations; and (2) the Owner, its elected and appointed officials, employees, volunteers and agents and Architect as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations.

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

§ 17.1.13 All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Upon receipt of notice from the Contractor, the Owner shall have the right to either stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor or terminate the contract, at Owner's option. In the event Owner does not terminate, the furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 17.1.14 Other Insurance Provided by the Contractor**

*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

**Coverage**

**Limits**

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

**§ 17.2 Owner's Insurance**

§ 17.2.1

*(Paragraphs deleted)*

Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Article 15.7 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 17.2.1 to be covered, whichever is earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

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

*(Paragraphs deleted)*

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

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

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

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

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

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

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

§ 17.2.9 Notwithstanding any provision contained in Article 17, the Owner's obligation to purchase insurance shall herein be deemed satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor agrees that any obligation the Owner has to purchase property insurance shall be satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor further agrees that it will only have rights allowable to it under any coverage provided through the Owner's membership in a self-insured risk management agency or pool.

Omitted.

*(Table deleted)*

**§ 17.3 Performance Bond and Payment Bond**

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

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

§ 17.3.3 The Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond. The Performance Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for the faithful performance of the obligations of the Contract Documents, including the payment of prevailing wages in accordance with Article 23 of this Agreement, and the Labor and Material Payment Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for required payments to all persons performing labor and furnishing materials in connection with the Work. Such bonds shall be on AIA Document A-312, or the most current edition, issued by the American Institute of Architects, shall be issued by a surety satisfactory to the Owner, and shall name the Owner as primary co-obligee. Such bonds shall be from an Illinois Admitted Bonding Company acceptable to the Owner and having a minimum policy holder rating of "B+" in the latest edition of Best's Insurance Guide in effect as of the date of the Contract. Bonds shall remain in full force and effect for at least one year following the date of Final Completion of the Work or for the entire duration of the longest warranty period provided for the Work, whichever is longer. The cost of the bonds is to be included in the Contract Sum stated by the Contractor in its Bid Proposal.

§17.3.4 The Contractor shall (i) furnish with all bonds a certified copy of the power of attorney from the Surety

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

**§17.3.5** In addition to the required performance and labor and material payment bonds, Contractor shall furnish a maintenance bond and/or irrevocable letter of credit in the amount of the Contract to guarantee the Work performed under the Contract against defective workmanship and/or defective materials of any nature for a period of not less than twenty-four (24) months from the date of acceptance of the Work, materials or equipment provided. The maintenance bond shall be in a form acceptable to District.

## **ARTICLE 18 CORRECTION OF WORK**

**§ 18.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Final Completion the Contractor, a Subcontractor, or anyone for who either of them is responsible, uses or damages any portion of the Work, including but not limited to mechanical, electrical, plumbing or other building system, machinery, equipment or other mechanical device, the Contractor shall cause such item to be replaced or if permitted by the Owner restored to "like new" condition, at no expense to the Owner.

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

**§ 18.1.3** If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Owner or 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

**§ 18.2** In addition to the Contractor's obligations under Section 9.4, if, within twenty-four months after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of 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. The obligation under this Section 18.2 shall survive acceptance of the Work under the Contract and termination of the Contract. Contractor shall, within a reasonable time under the circumstances, after receipt of written notice thereof, correct, repair, replace and otherwise make good any defects or non-conformity in the Work.

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

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

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

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

**§ 18.7** Nothing contained in this Article 18 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Work as described in Article 18 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.

## **ARTICLE 19 MISCELLANEOUS PROVISIONS**

### **§ 19.1 Assignment of Contract**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 19.2 Governing Law**

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

### **§ 19.3 Tests and Inspections**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public 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 (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor, unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor, unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs.

### **§ 19.4 The Owner's representative:**

*(Name, address, email address and other information)*

Alin Pop  
Oak Brook Park District  
1300 Forest Gate Road  
Oak Brook, IL 60523  
T: 630-990-4660  
Email:

### **§ 19.5 The Contractor's representative:**

*(Name, address, email address and other information)*

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

§ 19.7 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.

§ 19.8 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 in writing.

§ 19.9 The Contractor agrees that the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Architect, except for failure to make payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be entitled, saving only the Contractor's right to money damages to the extent provided in the Contract Documents.

## ARTICLE 20 TERMINATION OF THE CONTRACT

### § 20.1 Termination by the Contractor

If the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days through no fault of the Contractor or for any undisputed payment and has not notified Contractor for the reason for withholding payment, the Contractor may, as its sole remedy, upon seven additional days' notice to the Owner and the Architect, terminate this Agreement unless this reason is cured prior to the expiration of the notice period, and recover from Owner payment of Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) provided said Work was authorized in advance by Owner. The Owner shall have the right to cure any defect or default prior to the date of termination stated in any written notice from Contractor as provided herein, in which event Contractor shall continue with the Work. If the Contractor terminates the Work and receives payment in connection with his equipment, tools or materials such items shall be left and remain on the Site if the Owner so elects. Owner shall not be responsible for damages for loss of anticipated profits on Work not performed.

### § 20.2 Termination by the Owner for Cause

§ 20.2.1 The Owner may immediately terminate the Contract if the Contractor in the event of a breach or default of by Contractor in the event Contractor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation and/or Contract Documents; (2) make any payments owed in accordance with the Contract Documents; or (3) otherwise perform in accordance with the Contract Documents.

*(Paragraph deleted)*

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

*(Paragraphs deleted)*

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

shall remove any part or all of this equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in such event at the Contractor's expense. Upon request of the Contractor, the Owner shall furnish to the Contractor a reasonably detailed accounting of the costs incurred by the Owner in completing the Work.

§ 20.2.2 Intentionally omitted.

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

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

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

### § 20.3 Termination by the Owner for Convenience

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

*(Paragraphs deleted)*

Termination by the Owner under this Section 20.3 shall be by a written notice of termination specifying the extent of termination and the effective date.

§ 20.3.1 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties:

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

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

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

### §20.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

- .1 That the performance is, was, or would have been so suspended, delayed or interrupted by another

.2 cause, including without limitation the fault or negligence of the Contractor or any Subcontractor; or That an equitable adjustment is made or denied under another provision of this Contract.

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

## **ARTICLE 21 CLAIMS AND DISPUTES**

### **§ 21.1 Definition**

A Claim is a demand or assertion by the Contractor 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. As used in this Article 21 and its subparts, "Claims" refers only to Claims by the Contractor, and does not include Claims by the Owner.

The Initial Decision Maker shall be the Owner.

### **§ 21.2 Notice of Claims**

**§ 21.2.1** Claims by the Contractor, shall be initiated by notice to the Owner 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.

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this section 21.2.1 shall be given before proceeding to execute the Work.

If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in this section 21.2.1 shall be given. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. 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. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive, as the case may be. This Paragraph is not intended to and shall not create any additional grounds upon which the Contractor may be entitled to an increase in the Contract Sum beyond those grounds provided elsewhere in this Contract. In no event shall the Contractor make a claim for additional costs resulting from any delays in the progress of the Work or for reasons set forth in Section 9.1.1 or 14.5 of this Agreement.

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. In the event of a dispute, requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the reporting station nearest the Project. The ten (10)-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the Contractor would normally expect to encounter. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if the Owner determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

**§ 21.2.2** Claims by the 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 18.2, shall be initiated by notice to the Owner. In such event, no decision by the Initial Decision Maker is required.

**§ 21.2.3** Owner will review Claims for initial decision and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) reject the Claim in whole or in part, stating reasons for rejection, (3) approve the Claim, or (4) suggest a compromise. An initial decision by the Owner shall be condition precedent to litigation of any Claim initiated by Contractor and arising prior to the date final payment is due.

If the Owner 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

Init.

data, (2) advise the Owner when the response or supporting data will be furnished, or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 21.2.4 If a Claim has been resolved, the Owner will prepare or obtain appropriate documentation.

§ 21.2.5 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Owner's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Owner, (2) modify the initial Claim or (3) notify the Owner that the initial Claim stands.

§ 21.2.6 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Owner, the Owner will notify the parties in writing that the Owner's decision will be made within seven days, which decision shall be considered advisory only and not binding on the parties. Upon expiration of such time period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be 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.

§ 21.2.7 Notwithstanding anything herein to the contrary, any suit or action arising under this Contract shall be commenced in Circuit Court of DuPage County, Illinois.

### § 21.3 Time Limits on Claims

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

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

§ 21.5 Intentionally omitted.

§ 21.6 Intentionally omitted.

*(Paragraphs deleted)*

§ 21.7- § 21.9 Intentionally omitted.

### § 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, if any, subject to the right of either party to proceed in accordance with this Article 21. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

### § 21.11 Waiver of Claims for Consequential Damages

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

*(Paragraphs deleted)*

waiver includes, but is not limited to damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit arising from the Work.

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

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

and costs of litigation.

## ARTICLE 22 OTHER CONDITIONS OR PROVISIONS

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

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

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

§22.4 The following definitions are added to the Contract:

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

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

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

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

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

- (i) Modifications.
- (ii) Specifications.
- (iii) This Agreement except that the Supplementary Conditions shall take precedence over the General Conditions of the Contract.

## ARTICLE 23 • COMPLIANCE WITH LAWS

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

§23.2 The Contractor shall maintain and shall require its Subcontractors to maintain policies of employment as

follows:

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

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or preference, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to a person's ability to perform the essential functions of the job, association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 2) That, if it hires additional employees in order to perform this Contract or any portions thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental handicap or disability unrelated to a person's ability to perform the essential function of the job, or association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest.
- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and rules and regulations, the Contractor will promptly notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 5) That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
- 6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Owner and the Department for purposes of investigation to ascertain Department's rules and regulations.
- 7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract. The Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Owner and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible (or contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

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

construction.

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

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. Current prevailing wage rates are published at the following: <http://labor.illinois.gov/>. The Contractor agrees to indemnify and hold harmless the Park District for any violations of the Prevailing Wage Act.

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

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

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

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

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



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

OAK BROOK PARK DISTRICT

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

Sharon Knitter, President, Oak Brook Park District  
Board of Park Commissioners

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

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

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

# Additions and Deletions Report for AIA® Document A104® – 2017

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## PAGE 1

**AGREEMENT** made as of the day of in the year Two Thousand Twenty-Four

...

Oak Brook Park District  
1450 Forest Gate Road  
Oak Brook, IL 60523

...

Oak Brook Park District Tennis Center Front Desk Renovation  
1300 Forest Gate Road  
Oak Broo, IL 60523

This Project includes construction offices and a storage room at the Oak Brook Park's District Tennis Center, and all other incidental and collateral work necessary to complete the Project in accordance with the Contract Documents.

...

Kluber, Inc.  
41 W. Benton  
Aurora, IL 60506  
**PAGE 2**

~~EXHIBIT A DETERMINATION OF THE COST OF THE WORK~~ **22 OTHER CONDITIONS OR PROVISIONS**

**23 COMPLIANCE WITH LAWS**  
**PAGE 3**

Established as follows:

...

February 26, 2024

...

By the following date: April 30, 2024

**§ 2.4 Final Completion**

**§ 2.4.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Final Completion of the entire Work:

*(Check the appropriate box and complete the necessary information.)*

Not later than ( ) calendar days from the date of commencement of the Work.

By the following date: May 31, 2024

...

NA

...

Stipulated Sum, in accordance with Section 3.2 below

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NA

...

~~**§ 3.3 Cost of the Work Plus Contractor's Fee**~~

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

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

~~**§ 3.3.2** The Contractor's Fee:~~

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

~~**§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price**~~

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

~~**§ 3.4.2** The Contractor's Fee:~~

~~*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)*~~ 1. In the manner agreed to by the Parties, or in the absence of agreement then the combined allowance for overhead and profit in connection with changes to the Work shall be the lesser of the amount, if any, included in the Contractor's bid proposal, or the following:

~~**§ 3.4.3 Guaranteed Maximum Price**~~

~~**§ 3.4.3.1** The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$ ), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. a. Five percent (5%) of the cost of the change in the Work involved if performed by the Contractor not involving Subcontractors, or~~

~~*(Insert specific provisions if the Contractor is to participate in any savings.)*~~

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

~~(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)~~b. Five percent (5%) of the cost of the change in the Work involved performed by Subcontractors, plus two percent (2%) of the cost of the change in the Work for the Contractor's supervision of the work performed by the Subcontractors.

~~§ 3.4.3.3 Unit Prices, if any:~~

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

<del>Item</del>	<del>Units and Limitations</del>	<del>Price per Unit (\$0.00)</del>
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~~§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:~~

~~(Identify each allowance.)~~

<del>Item</del>	<del>Price</del>
-----------------	------------------

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

~~§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. When both additions and credits covering related Work are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.~~

~~§ 3.2.5 Overtime, if and when specifically authorized in advance in writing by the Owner shall be paid by the Owner on the basis of premium payment if any, plus the cost of insurance and taxes based on the premium payment period. No overhead or profit may be charged for overtime. The Contractor shall not be entitled to any payment for overtime necessitated by the failure of the Contractor to perform the Work in accordance with the Contract Documents including without limitation to the Contractor's failure to prosecute the Work diligently and on an uninterrupted basis and with a sufficient work force so as to achieve completion of the Work within the time and in the manner contemplated by the Contract Documents or otherwise due to the fault of the Contractor. In such instances if the Owner requires the Contractor to perform Work on an overtime basis, all costs for and associates with such overtime shall be borne by the Contractor.~~

~~§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.~~

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NA

...

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

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

...

§ 4.1.3 Provided that an Application for Payment ~~is received by the Architect not later than the day of a month, the Payment, which is in proper form and accompanied by the required supporting documents and submittals, in form and substance required by the Contract Documents, is received by the Architect, certified by Architect and not subsequently nullified by Architect~~, the Owner shall make payment of the certified amount to the Contractor ~~not later than the day of the month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.~~

...

§ 4.1.4 For each progress payment made prior to ~~Substantial~~Final Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

...

10%

Upon 50% completion of the Contract, Owner will reduce the retainage to 5%. For each progress payment made after 50% completion of the Contract, the Owner may withhold retainage from the payment otherwise due as follows: 5% of any subsequent payment made under the Contract.

Contractor and all subcontractors shall comply with the retainage limits as set forth in the Public Construction Bond Act, 30 ILCS 550/1 et seq.

§ 4.1.5 Payments due and unpaid under ~~the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located~~ the Contract, and any penalties associated with the same, shall be paid in accordance with the provisions of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.  
*(Insert rate of interest agreed upon, if any.)*

~~—%~~

...

- .1 ~~the Contractor has fully performed the Contract except for the achieved Final Completion of the Work, including Final Completion for Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;~~

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§ 4.2.2 ~~The Subject to § 4.2.1, the Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~in compliance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq after the Architect has issued the final Certificate for Payment and Owner has approved the same.

...

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, Unless Owner requires non-binding mediation, the method of binding dispute resolution shall be as follows:

...

Litigation in a court of competent jurisdiction

...

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

...

§ 6.1.2 AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Intentionally Omitted.  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

§ 6.1.3 The Supplementary and other Conditions of the Contract:  
the Contract are those included in the Project Manual dated January 15, 2024.

Document	Title	Date	Pages
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§ 6.1.4 The Specifications:  
*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Specifications are those included in the Project Manual dated January 15, 2024.

Section	Title	Date	Pages
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~~§ 6.1.5 The Drawings:~~ § 6.1.5 The Drawings are those included in the Project Manual dated January 15, 2024.

...

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

...

~~Exhibit A, Determination of the Cost of the Work.~~

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Supplementary and other Conditions of the Contract:

...

<u>See Project Manual</u>	<u>1/15/2024</u>
---------------------------	------------------

...

- a. Project Manual for Tennis Center Front Desk Renovation, dated January 15, 2024, incorporated herein by reference.
- b. Contractor's Proposal, dated \_\_\_\_\_, attached to and incorporated in this Agreement as Exhibit A.
- c. Contractor's Compliance and Certification, a copy of which is attached to and incorporated in this Agreement as Exhibit B.
- d. Performance Bond, Labor Material Payment Bond and Maintenance Bond, copies of which are attached to and incorporated as part of this Agreement by reference.

...

~~§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights 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.~~

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, if applicable, 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 this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

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

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The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will~~ if applicable, the parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, if completed, 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.

...

§ 7.9.1 Except as otherwise provided in Section 7.9.2, 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 in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:~~

~~(If other than in accordance with AIA Document E203-2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~ to the designated representative of the party to who the notice is addressed in person, by mail, by overnight courier, or by electronic transmission, with the sending party retaining confirmation of receipt.

...

~~§ 7.9.2 Notice of Claims 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, and is delivered in person, by certified or registered mail, return receipt requested, by overnight courier providing proof of delivery, or by email transmission with the sending party retaining confirmation of receipt.~~

~~For purposes of both 7.9.1 and 7.9.2, notices personally delivered shall be deemed given on the date of delivery, notices sent by certified mail shall be deemed delivered the second business day following deposit in the mail, notices sent by overnight courier shall be deemed delivered the next business day following deposit with the carrier, and notices sent by email transmission shall be deemed given on the date of transmission if sent on or before 5:00 PM on a business day, or, if later, the next business day.~~

#### ~~§ 7.10 Relationship of the Parties~~

~~Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.~~

...

~~§ 8.1.1 Prior to commencement of the Work, at the 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 8.1.1, the Contract Time shall be extended appropriately.~~

~~Intentionally omitted.~~

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~~§ 8.1.3 The Subject to the Contractor's duties and obligations under the Contract Document and § 9.1.1 of this Agreement, 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.~~

...

~~If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, material or equipment so as to be able to complete the Work within the Contract Time, or fails to pay subcontractors or material suppliers timely or to remove and discharge within ten days any lien filed upon the Owner's property or funds by anyone claiming by, through or under the Contractor, or disregards the instructions of the Architect or Owner when based on the requirements of the Contract Documents, or otherwise fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.~~

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of or fails to perform a duty under or comply with a provision of the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or fails within such seven-day period to eliminate (or diligently commence to eliminate) the cause of any stop work order issued under Section 8.2 thereof, the~~



Owner may, without prejudice to any 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 deficiencies, default or neglect~~ and may deduct the actual cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. Architect may, pursuant to Section 15.4.3, 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 the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. 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 21.

...

**§ 9.1.1** ~~Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. By its execution of the Contract, the Contractor acknowledges, agrees, represents, and warrants that:~~ (a) the Contractor has carefully and thoroughly examined the Contract Documents, and the Contract Documents are full and complete, include all items necessary for the proper execution and completion of the Work, are sufficient to have enabled the Contractor to determine the cost of the Work and the time required for performance of the Work and to enable Contractor to construct the Work indicated therein in accordance with laws, ordinances, codes, regulations and rules applicable to the Work, and otherwise to fulfill all its obligations thereunder, including, but not limited to, Contractor's obligation to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial and Final Completion established in the Contract; (b) the omission from the Contract Documents of minor details which ordinarily form a part of first class work and are necessary to the completion of the Work as indicated, shall not be cause for any extra cost but shall be included as if specifically mentioned or detailed; (c) the Contractor has visited and examined the Project site and surrounding areas, examined all physical, legal and other conditions affecting the Work and correlated its personal observations with the requirements of the Contract Documents, and understands, is familiar with, and satisfied itself as to the same, including, without limitation: (i) the nature, location, and character of the Project and the site, including, without limitation surface conditions of the site and subsurface conditions observable or ascertainable upon the exercise of reasonable diligence including all structures and obstructions thereon and thereunder, both natural and manmade and all surface and subsurface water conditions of the site and the surrounding area; (ii) the nature, location, and character of the general area in which the Project is located, including without limitation, its generally prevailing climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; (iii) the availability, quality, quantity and cost of all labor, materials, supplies, tools, equipment and professional services necessary to complete the Work in the manner and within the cost and time frame indicated by the Contract Documents.

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

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**§ 9.1.3** ~~The~~ Except as otherwise required by the Contract Documents, 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.

...

§ 9.2.1 The Contractor shall supervise and direct the Work, Work when being performed, using the Contractor's best skill and attention, attention under the supervision of an approved site superintendent or foreman capable of communicating clearly with the Architect and the Owner in English. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

...

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

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

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

§9.3.5 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect, Owner's representative or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members of councils which regulate or distinguish what activities shall not be included in the Work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of the conflict involving any such agreement or regulations, the Architect or Owner's representative with the Owner's approval may require that other materials or equipment of equal kind and quality be provided at no additional cost to the Owner.

§ 9.3.6 The Contractor shall carefully inspect all materials delivered on and to the Project site and reject defective materials without waiting for the Architect or Owner to observe the materials. Contractor shall be responsible for and liable for any materials purchased for the Project and not yet paid for by Owner.

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

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

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

...

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.~~ faults and defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work ~~not executed by the Contractor, of persons other than Contractor or subcontractor,~~ improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other 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 15.6.3 to~~ the Owner. ~~Inability, failure or refusal of the Subcontractor or supplier responsible for the defective materials, equipment or Work to correct the same shall not excuse the Contractor from performing under the warranty. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials being furnished.~~

All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by the Contractor. All warranties shall be addressed to the Owner and delivered to the Owner upon completion of the Work and before or with the submission of request for final payment. Except as otherwise provided in this Agreement or elsewhere in the Contract Documents, or in any Certificate of Substantial or Partial Completion approved by the Owner and Contractor and/or subcontractor, as applicable, all warranties shall become effective on the date of Substantial Completion of the entire Work unless otherwise provided in any Certificate of Partial or Substantial Completion approved by the Owner and the Contractor or Subcontractor, as applicable, but only with respect to warranties for that specific portion of the Work, and shall run for a twenty-four (24) month period, unless a longer period is provided for in the Contract Documents or by law. Where warranties overlap, the more stringent requirement shall govern. The Contractor shall consult with the Owner prior to the submission of any application to the appropriate permitting agency or authority in order to afford Owner the opportunity to obtain a waiver or reduction of any fees or costs associated therewith.

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

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

...

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

...

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade

~~discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.~~ § 9.7.1 The Contractor shall include in the Contract Sum all allowances stated in Section 3.2.3: such allowances are for Project budget purposes only. In the event Owner directs the use of an allowance, or a portion thereof, a Change Order will be issued for the same. The amount of the Change Order shall reflect the Contractor's actual costs. Any portion of the allowance that remains when the Work is completed belongs to the Owner.

§ 9.7.2 Any contingencies included for the Project budget will be an Owner contingency and shall belong solely to the Owner for the purpose of being allocated towards stipulated additional work and for certain unanticipated costs resulting from acceleration in the Work, regulatory changes, concealed conditions, and other unforeseen causes as approved by Owner and itemized in an executed Change Order. Any portion of the Owner's contingency that remains when the Work is completed belongs to the Owner.

;  
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§ 9.9.4 Contractor's requests for information shall be made in a form approved by the Architect and shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

The 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 as otherwise directed by Owner and shall not unreasonably encumber the site with materials or equipment.

#### § 9.10.1 Parking & Traffic.

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

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

§9.10.2 Fencing. Contractor will be responsible for erecting and maintaining construction fencing around the limits of the Project site at all times of construction in accordance with applicable law and the Contract Documents. Failure to erect or maintain this fencing will result in the correction of the problem by the Owner at the expense of the Contractor, and may include, but are not limited to, the cost of any materials and staff time. This fence must be installed and fully erected before construction operations beginning and tied-up at the end of each working day.

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

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

§ 9.12.1 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.

...

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

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

Claims, damages, losses and expenses' as these words are used in the Contract shall be construed to include, but not to be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by any Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus consists of travel, long distance telephone and reproduction of documents.

Nothing contained herein shall be construed as prohibiting the Owner, its officers, employees or agents from defending, through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings or actions brought against them. The Owner's participation in its defense shall not remove the Contractor's duty to indemnify, defend and hold the Owner harmless as set forth herein.

The indemnification required hereunder shall not be limited by reason of the enumeration of insurance coverage herein provided.

The Contractor's indemnification of the Owner shall survive the termination or expiration of the Contract.

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§ 9.16 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 seven (7) days after

first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons and the Contract Sum or time for performance of the Work shall not be adjusted. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 21.

...

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

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§ 10.5 Based on the Architect's evaluations of the quality and progress of the Work and 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. The Architect shall conduct inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor.

...

§ 10.7 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 the Contractor's submittals by the Architect 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. 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.

...

§ 10.10 The Architect will review and respond in writing to the Contractor's requests for information about the Contract Documents. The Architect's response to each request 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.

...

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, ~~as soon as practicable after award of the Contract,~~ with its bid proposal, shall notify the Owner and Architect ~~of the Subcontractors or suppliers in writing of the name, trade and subcontract amount of each Subcontractor and supplier proposed for each of the principal portions of the Work.~~ The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has



made reasonable written objection within ten days after receipt of the Contractor's written list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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§ 11.4 All subcontracts shall be in writing and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract and that the Owner shall have the right to enforce the Subcontractor's obligations thereunder after the occurrence of a default under the Contract by the contractor. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar written agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their representatives proposed Sub-subcontractors.

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

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§ 12.4 The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction or to property of the Owner or of the Separate Contractor as provided in Section 16.1.

...

§ 13.1.1 In order to evaluate proposals for changes to the Work, the Contractor shall submit a complete itemization of all costs, including hours of labor, quantities of materials, amounts of subcontracts, etc., separately defining Work deleted and Work added. In no case will a lump sum proposal be approved without such itemization.

§ 13.1.2 The combined allowance for overhead and profit in connection with changes to the Work other than changes where adjustments to the Contract Sum are calculated based on unit prices, shall be calculated as provided in Section

3.2.4. In calculating the allowance, the cost of performance and payment bonds shall be excluded. There shall be no allowance and no increase in the Contract Sum for any increase in the actual cost to the Contractor of the performance bond and the payment bond resulting from additional changes to the Work. Likewise, there shall be no decrease in the Contract Sum for any decrease in the actual cost to the Contractor of the performance bond and the payment bond resulting from any deductive changes to the Work.

§ 13.1.3 Reserved.

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

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

Methods used in determining adjustments to the Contract sum may include those listed in Section 13.2.2. Notwithstanding any provision to the contrary in the Contract Documents, the overhead and profit for Contractor and Subcontractors on any Change Order or Construction Change Directive shall be determined as specified in Section 3.2.4. No Change Order shall be approved or paid unless preceded by a written direction for the Change Order is provided by the Owner. This requirement cannot be waived by conduct, custom, or practice with respect to this Project or other projects. There shall be no implied or constructive change orders.

§ 13.2 Adjustments in A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect and directed to the Contractor, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order, being adjusted accordingly.

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

§ 13.2.2 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 13.2.5.



§ 13.2.3 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.

§ 13.2.4 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.

§ 13.2.5 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable amount for overhead and profit as set forth in Section 3.2.4. In such case, and also under Section 13.2.2.3, 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 13.2.5 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all insurance, and permit fees related to the Work; and
5. Overtime when specifically authorized by the Owner and not attributable to delays caused by the Contractor or Subcontractor will be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment. Overhead and profit will not be paid by the Owner for overtime. Contractor shall submit detailed itemized breakdowns of quantities and unit costs, including overhead and profit as separate items with response to request for price.

§ 13.2.6 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; in such situations, if the amount of either the credit or the addition is in dispute, the amount of the other, non-disputed item may not be included in the Application for Payment.

§ 13.2.6 Reserved.

§ 13.2.7 When the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation of and execution of an appropriate Change Order.

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§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor, provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed. Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 9.16.

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

§ 13.6 No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Contract Sum or change in the Contract Time unless and until such alteration or addition has been authorized by a Change Order executed and issued in accordance with and in strict compliance with the requirements of the Contract Documents and applicable law. In the event Contractor submits a Claim for an increase in the Contract Sum pursuant to Sections 21.2.1, Contractor shall provide written notice to the Owner before proceeding to execute the Work that is the subject of the Claim. Contractor shall not perform any Work associated with the Claim until approved by written Change Order by the Owner. Accordingly, no course of conduct or dealing between the parties, nor any express or implied acceptance of alterations or additions to the Work and no claim that the Owner has been unjustly enriched shall be the basis of any claim to an increase in the Contract Sum or change in the Contract Time.

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

...

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.6.3 and Final Completion are the dates certified by the Architect and approved by Owner in accordance with Section 15.6.3. . The date of Final Completion is defined in Section 22.4. The Contractor shall carry the Work forward regularly, diligently, uninterruptedly and expeditiously and in a good workmanlike and professional manner at such a rate of progress and with an adequate work force as will insure the completion of the Work in accordance with the Contract Documents by the date established in the Contract. It is expressly understood and agreed by and between Contractor and Owner that the time for completion of the Work is a reasonable time, taking into consideration the average climatic range, usual industrial conditions, and all other conditions and actors prevailing in this locality.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the Contractor asserts, and the Architect determines, justify delay, then An extension of the Contract Time shall be the sole remedy of Contractor for delays in the commencement, prosecution or completion of the Work, except for delays caused solely by acts of Owner that constitute intentional interference with Contractor's performance of the Work. In the event of such a delay, the Contract Time shall be extended for such reasonable time as the Architect may determine, subject to the provisions of Article 21, determine and as approved by Contractor and Owner; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. Owner's exercise of any of its rights or remedies under the Contract including, without limitation, ordering changes in the Work or directing suspension, rescheduling, or correction of the Work, shall not be construed as intentional interference with Contractor's performance of the Work regardless of the extent or frequency of Owner's exercise of such rights or remedies. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 14.5.1 Contractor agrees that it shall make no claims against Owner for damages, charges, interest, loss opportunity or productivity costs, additional costs or fees incurred by reason of delays or suspension of work pursuant to Section 14.5. Contractor's sole and exclusive remedy for delays, stoppage, or suspension of the Work pursuant to Section 14.5 is an extension of Contract Time equal to the duration of the delay, stoppage, or suspension to allow the Contractor to complete its Work under this Agreement.

§ 14.5.2 If conditions, events or circumstances occur which may cause a delay in the progress of the Work, Contractor shall promptly notify Architect within ten (10) days after the first occurrence of such condition, event or circumstance, describing in reasonable detail the nature thereof and an estimate of cost and of probable effect of delay on progress of the Work. Failure of Contractor to provide such notice shall constitute a complete waiver and release by Contractor of any claim of entitlement to an extension in the Contract Time or increase in the Contract Sum.

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

§ 14.5.4 In addition to liquidated damages set forth elsewhere in the Contract Documents, if any, the Contractor shall reimburse the Owner for all Architect's fees for additional services necessitated by (1) Contractor's failure to achieve Substantial Completion within the time established in the Contract Documents; (2) for more than one inspection for Substantial Completion; and (3) for more than one inspection for Final Completion

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~~§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, pursuant to Section 3.2, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price 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 of values shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

~~§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.~~

~~§ 15.2 Control Estimate Reserved.~~

~~§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.~~

~~§ 15.2.2 The Control Estimate shall include:~~

- ~~1 — the documents enumerated in Article 6, including all Modifications thereto;~~
- ~~2 — a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;~~
- ~~3 — a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;~~
- ~~4 — a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and~~
- ~~5 — a list of any contingency amounts included in the Control Estimate for further development of design and construction.~~

~~§ 15.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.~~

~~§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.~~

~~§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.~~

§ 15.3.1 At least ~~ten~~ fifteen 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 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. 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. Until Final Completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments. No interest will be paid on retention amounts.

~~§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee Reserved.~~

~~§ 15.3.3 Payments Unless approved in advance by the Owner in writing, 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 stored, and protected from damage, off the site at a location agreed upon in writing, incorporated in the Work. 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.~~

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~~§ 15.3.5 Failure to supply waivers of lien or acceptable evidence of payment of all current accounts incurred by this Contract work will be considered grounds for withholding final payment.~~

~~§ 15.3.6 The first payment application shall be accompanied by the Contractor's Partial Waiver of Lien only, for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor Partial Waiver, and by the Partial lien Waivers of Subcontractor and Suppliers who were included in the immediately preceding payment application to the extent of that payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanics Lien Act (770 ILCS 60/0.01 et seq.) and showing in detail the sources of all labor and materials used and contracted to be used on the Project, including names and addresses of subcontractors and material suppliers; amounts paid and remaining to be paid to each; together with all documents as shall be necessary, in the sole judgment of the Architect and Owner, to waive all claims of liens to date and comply with all applicable state and local laws.~~

- (i) All waivers (partial and final) shall include language as applicable indicating either that:
  - a. all material were taken from fully paid stock and delivered to job site in our own vehicles and all labor has been fully paid in accordance with prevailing wage laws; or
  - b. materials were provided by the following suppliers for whom waivers of lien are attached and all labor has been fully paid in accordance with prevailing wage laws.

§ 15.4.1 The Architect will, ~~within seven days~~ after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, but not to Contractor, based on the Architect's evaluations 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 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. The issuance of a Certificate for Payment will further constitute a representation to the Owner but not to the Contractor that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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.

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

§ 15.4.4 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21-~~the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. No interest will be paid on amounts withheld.

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

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§ 15.5.1 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. This provision is not to be construed as a "conditional payment" or "pay when paid" clause. In the event that payment to the Contractor is delayed without fault of the Subcontractor, payment to the Subcontractor shall be made within a reasonable time after work is properly performed by a Subcontractor irrespective of any delay in payment to the Contractor.

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

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§ 15.5.4 ~~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.

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

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§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete-completed in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use-for its intended use and has been accepted by Owner to receive all required occupancy permits.

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

§ 15.6.2 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. The Contractor shall proceed promptly to cause all items on the Punch list to be completed and corrected without waiting for the Architect and Owner to make an inspection. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, Punch List, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's or Owner's inspection discloses an item, whether or not included in the Contractor's Punch List, which is not in accordance with the Contract Documents and is necessary for Owner's occupancy or utilization of the Work, the Contractor shall before issuance of a Certificate of Substantial Completion, complete such items upon notification from the Architect and Owner. The cost of this and any additional inspections required to establish Substantial Completion due to the failure of the Contractor to properly complete all items of the Work necessary for the Owner's use or occupancy of the Work shall be charged to the Contractor. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion to the Owner for review and concurrence by the Owner which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Punch List accompanying the Certificate which shall not exceed a period of thirty (30) days. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion with the exception of the items of Work contained in the Punch List accompanying the Certificate of Substantial Completion. With respect to Work enumerated on the Punch List, the guarantee or warranty period shall commence upon Contractor's completion and Owner's approval of the Punch List items.

§ 15.6.4 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.

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§ 15.7.1 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, and the Architect has

advised Owner of that finding and Owner has not advised Architect of any objection to such finding, the Architect will promptly issue a final Certificate for Payment to the Owner but not the Contractor stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Owner's failure to object to, and the Owner's acceptance of, the Architect's findings and/or certifications hereunder shall not constitute Owner's acceptance of Work not complying with the Contract Documents, or Owner's waiver of any claims or remedies it may have with respect to any such defective or delayed Work.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) all outstanding and final waivers of lien and sworn affidavits; (2) 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, (3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (4) 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, (5) consent of surety, if any, to final payment (6) documentation of any warranties, such as manufacturers' warranties or specific Subcontractor warranties, operating manuals and all other documents required to be furnished to Owner pursuant to the Contract Documents prior to final payment (7), 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 Owner: (a) may allow the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien, claim, security interest, or encumbrance and, 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 such lien, including costs and reasonable attorneys' fees; the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees; or (b) withhold from payment to the Contractor the amount claimed due by the Subcontractor. The Owner reserves the right but does not assume any obligation to issue payment directly a Subcontractor or to issue dual payee checks to the Contractor and the Subcontractor in the event of a dispute.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from  
.1 — liens, claims, security interests or encumbrances arising out of the Contract and unsettled;  
.2 — failure of the Work to comply with the requirements of the Contract Documents;  
.3 — terms of special warranties required by the Contract Documents; or  
.4 — audits performed by the Owner, if permitted by the Contract Documents,

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

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or 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 the final Application for Payment.payee.

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The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 12.4, 16.1.2 and 16.1.3. 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 by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15. The Owner reserves the right to restore any such property and deduct from payments then or thereafter due Contractor the cost of restoring such property, including compensation to the Owner for any and all expenses related thereto. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to the Owner.

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§ 16.2.1 The Contractor is responsible for compliance with the requirements of 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. 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, resume. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up equitably extended.

§ 16.2.2 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. The Owner shall not be responsible under this Section 16.2 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 procurement, delivery, unloading, loading, stockpiling, storing, preparing, installing, use and/or handling of such materials or substances (collectively, "handles").~~

§ 16.2.3 ~~If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred. 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 16.2.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~

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§ 17.1.1 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 this Section 17.1 ~~or elsewhere~~ and in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Contractor shall procure insurance from insurance companies that have obtained A.M.



Best ratings no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable. Failure to maintain the required insurance may result in termination of the Contract at Owner's option. Owner shall have the right, but not the obligation, of prohibiting Contractor or any Subcontractor from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

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Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following Substantial Completion of the Work.

§ 17.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) aggregate for products-completed operations hazard, Two Million Dollars (\$ 2,000,000 ) each occurrence, Two Million Dollars (\$ 2,000,000 ) general aggregate, which shall apply separately to this project, and Two Million Dollars (\$ 2,000,000 ) each occurrence for products-completed operations hazard for at least three years following Completion of the Work, providing coverage for claims including

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.5 the Contractor's indemnity obligations under Section 9.15.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 04 13, or a substitute form providing equivalent coverage, and shall also cover liability arising from premises, operations, independent contractors, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract)

The Owner, its elected and appointed officials, employees, agents and volunteers and Architect shall be included as an additional named insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. The coverage afforded the additional insureds shall apply as primary insurance for the additional insured with respect to claims arising out of operations performed by or on behalf of the Contractor. If the additional insureds have other self-insurance or insurance which is applicable to the loss, such other self-insurance or insurance shall be on an excess or contingent basis. Any self-insurance maintained by the Owner or insurance maintained by Architect shall be deemed excess of such Contractor's insurance and shall not contribute with it. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

Contractor shall purchase insurance to cover claims and expenses, including costs of defense, asserted against Architect, its agents, employees and consultants for bodily injury, sickness, disease or death to the extent caused by any negligent act or omission of the Contractor any subcontractor, anyone directly or indirectly employed by them or anyone for whose act of them may be liable

**For Contractor's Continuing Completed Operations Liability Insurance:**

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 4 13, or substitute form providing equivalent coverage, and shall, at minimum, cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

§ 17.1.3 Automobile Liability covering vehicles owned by the ~~Contractor~~ Contractor, hired, and non-owned vehicles used by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Business auto insurance shall be written Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

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§ 17.1.5 Workers' Compensation ~~at statutory limits.~~

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's Work.

§ 17.1.6 Employers' Liability with policy limits not less than One Million Dollars (\$ 1,000,000 ) each accident, One Million Dollars (\$ 1,000,000 ) each employee, and One Million Dollars (\$ 1,000,000 ) policy limit.

§ 17.1.7 ~~If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

Intentionally deleted.

§ 17.1.8 ~~If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

Intentionally deleted.

§ 17.1.9 ~~Coverage under Sections 17.1.7 and 17.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

Intentionally deleted.

§ 17.1.10 The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 17.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and ~~(3) upon (3) within 10 days' upon the Owner's written request.~~ An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by ~~Section 17.1.1.~~ The certificates will show the Owner as an additional insured Section 17.1.1 or upon Owner's written request for the same. The certificates will show the Owner, its elected and appointed officials, employees, volunteers and agents and Architect as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

§ 17.1.11 The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

§ 17.1.12 To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 17.1 to include (1) the Owner, ~~the Architect, and the Architect's Consultants as additional insureds~~ its elected and appointed officials, employees, volunteers and agents and Architect for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) ~~the Owner as an Owner, its~~

elected and appointed officials, employees, volunteers and agents and Architect as additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04.

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

§ 17.1.13 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 this Section 17.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. 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 either stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The Contractor or terminate the contract, at Owner's option. In the event Owner does not terminate, the furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

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#### **§ 17.2.1 Owner's Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis without voluntary deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Article 15.7 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 17.2.1 to be covered, whichever is earlier. This insurance shall include the respective interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Work.

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

§ 17.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's

risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

~~§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.~~

~~§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.~~

~~§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

~~§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

~~§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, 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.~~

#### ~~§ 17.2.2.7 Waiver of Subrogation~~

~~§ 17.2.2.7.1 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 this 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 17.2.2.7 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.~~

~~§ 17.2.2.7.2 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 17.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

~~§ 17.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.~~

~~§ 17.2.3 Other Insurance Provided by the Owner~~

~~(List below any other insurance coverage to be provided by the Owner and any applicable limits.)The Contractor shall effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work.~~

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

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

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

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

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

§ 17.2.9 Notwithstanding any provision contained in Article 17, the Owner's obligation to purchase insurance shall herein be deemed satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor agrees that any obligation the Owner has to purchase property insurance shall be satisfied by the Owner's membership in a self-insured risk management agency or pool. The Contractor further agrees that it will only have rights allowable to it under any coverage provided through the Owner's membership in a self-insured risk management agency or pool.

Omitted.

**Coverage**

**Limits**

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§ 17.3.3 The Contractor, before commencing the Work, shall furnish a Performance Bond and a Labor and Material Payment Bond. The Performance Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for the faithful performance of the obligations of the Contract Documents, including the payment of prevailing wages in accordance with Article 23 of this Agreement, and the Labor and Material Payment Bond shall be in an amount equal to 110% of the full amount of the Contract Sum as security for required payments to all persons performing labor and furnishing materials in connection with the Work. Such bonds shall be on AIA Document

A-312, or the most current edition, issued by the American Institute of Architects, shall be issued by a surety satisfactory to the Owner, and shall name the Owner as primary co-obligee. Such bonds shall be from an Illinois Admitted Bonding Company acceptable to the Owner and having a minimum policy holder rating of "B+" in the latest edition of Best's Insurance Guide in effect as of the date of the Contract. Bonds shall remain in full force and effect for at least one year following the date of Final Completion of the Work or for the entire duration of the longest warranty period provided for the Work, whichever is longer. The cost of the bonds is to be included in the Contract Sum stated by the Contractor in its Bid Proposal.

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

§17.3.5 In addition to the required performance and labor and material payment bonds, Contractor shall furnish a maintenance bond and/or irrevocable letter of credit in the amount of the Contract to guarantee the Work performed under the Contract against defective workmanship and/or defective materials of any nature for a period of not less than twenty-four (24) months from the date of acceptance of the Work, materials or equipment provided. The maintenance bond shall be in a form acceptable to District.

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.1.7.3 in Exhibit A, Determination of the Cost of the Work expense. If prior to the date of Final Completion the Contractor, a Subcontractor, or anyone for who either of them is responsible, uses or damages any portion of the Work, including but not limited to mechanical, electrical, plumbing or other building system, machinery, equipment or other mechanical device, the Contractor shall cause such item to be replaced or if permitted by the Owner restored to "like new" condition, at no expense to the Owner.

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

§ 18.1.3 If a portion of the Work has been covered which the Architect has not specifically requested to observe prior to its being covered, the Owner or 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within ~~one year~~ twenty-four months after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of 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.~~ The obligation under this Section 18.2 shall survive acceptance of the Work under the Contract and termination of the Contract. Contractor shall, within a reasonable time under the circumstances, after receipt of written notice thereof, correct, repair, replace and otherwise make good any defects or non-conformity in the Work.

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

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18. Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

§ 18.7 Nothing contained in this Article 18 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the period for correction of Work as described in Article 18 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.

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~~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 21.6 located.~~

...

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect 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 (1) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations ~~concluded~~ concluded and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor, unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor, unless such tests, inspection or approvals were necessitated by the Contractor's failure to perform the Work in accordance with the Contract Documents in which event the Contractor shall bear the costs.

...

Alin Pop  
Oak Brook Park District  
1300 Forest Gate Road  
Oak Brook, IL 60523  
T: 630-990-4660  
Email:  
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§ 19.7 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.

§ 19.8 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 in writing.



§ 19.9 The Contractor agrees that the Contractor can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that no default, act, or omission of the Owner or the Architect, except for failure to make payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling the Contractor to cancel or rescind the provisions of this Contract or (unless the Owner shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. The Contractor hereby waives any and all rights and remedies to which the Contractor might otherwise be entitled, saving only the Contractor's right to money damages to the extent provided in the Contract Documents.

...

If the Architect-Owner fails to certify-make payment as provided in Section 4.1.3 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, Contractor or for any undisputed payment and has not notified Contractor for the reason for withholding payment, the Contractor may, as its sole remedy, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages-this Agreement unless this reason is cured prior to the expiration of the notice period, and recover from Owner payment of Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Contract) provided said Work was authorized in advance by Owner. The Owner shall have the right to cure any defect or default prior to the date of termination stated in any written notice from Contractor as provided herein, in which event Contractor shall continue with the Work. If the Contractor terminates the Work and receives payment in connection with his equipment, tools or materials such items shall be left and remain on the Site if the Owner so elects. Owner shall not be responsible for damages for loss of anticipated profits on Work not performed.

...

§ 20.2.1 The Owner may immediately terminate the Contract if the Contractor in the event of a breach or default of by Contractor in the event Contractor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation and/or Contract Documents; (2) make any payments owed in accordance with the Contract Documents; or (3) otherwise perform in accordance with the Contract Documents.

- ~~1~~ repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- ~~2~~ fails to make Additionally, if the Contractor shall institute proceedings or consent to proceeding requesting relief or arrangement under the Federal Bankruptcy Act or any applicable Federal or State Law, or if a petition under any federal or state insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of the filing, or if the Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee, or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of the Contractor's properties is appointed; or if the Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if the Contactor submits an application for payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if the Contractor fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- ~~3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents or otherwise breaches obligations under any subcontract with a Subcontractor; or if a lien or a notices of lien is filed against any part of the Project or Project funds or if the Contractor disregards any laws, statues, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the Project premises; or if the Contractor otherwise violates any material provision of the Contract Documents, then, without prejudice to any right or remedy available Owner may, after giving the Contractor seven (7) days' written notice, terminate the Contractor, and take possession of the Project and all materials, equipment, tools, construction equipment and



machinery thereon owned by the Contractor and accept assignment of Subcontracts and may complete the Work by whatever reasonable method the Owner may deem expedient. If requested by the Owner, the Contractor shall remove any part or all of this equipment, machinery and supplies from the Project within seven (7) days from the date of such request, and in such event at the Contractor's expense. Upon request of the Contractor, the Owner shall furnish to the Contractor a reasonably detailed accounting of the costs incurred by the Owner in completing the Work.

§ 20.2.2 ~~When any of the reasons described in Section 20.2.1 exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~ Intentionally omitted.

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

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. ~~The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:~~

~~(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)~~

Termination by the Owner under this Section 20.3 shall be by a written notice of termination specifying the extent of termination and the effective date.

§ 20.3.1 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties:

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

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

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

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

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

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

shall be made to the extent:

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

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

**§ 21.1** ~~Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.~~**Definition**

A Claim is a demand or assertion by the Contractor 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. As used in this Article 21 and its subparts, "Claims" refers only to Claims by the Contractor, and does not include Claims by the Owner.

The Initial Decision Maker shall be the Owner.

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~~§ 21.2.1~~ 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 18.2, shall be initiated by notice to the Architect-Owner 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.

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this section 21.2.1 shall be given before proceeding to execute the Work.

If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in this section 21.2.1 shall be given. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner. No such claim shall be valid unless so made. 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. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order or Construction Change Directive, as the case may be. This Paragraph is not intended to and shall not create any additional grounds upon which the Contractor may be entitled to an increase in the Contract Sum beyond those grounds provided elsewhere in this Contract. In no event shall the Contractor make a claim for additional costs resulting from any delays in the progress of the Work or for reasons set forth in Section 9.1.1 or 14.5 of this Agreement.

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. In the event of a dispute, requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, etc., for the past ten (10) years from the reporting station nearest the Project. The ten (10)-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the Contractor would normally expect to encounter. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if the Owner determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

~~§ 21.2.2~~ 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 18.2, shall be initiated by notice to the other party to the Owner. In such event, no decision by the Initial Decision Maker is required.

**§ 21.2.3** Owner will review Claims for initial decision and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) reject the Claim in

whole or in part, stating reasons for rejection, (3) approve the Claim, or (4) suggest a compromise. An initial decision by the Owner shall be condition precedent to litigation of any Claim initiated by Contractor and arising prior to the date final payment is due.

If the Owner 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 Owner when the response or supporting data will be furnished, or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 21.2.4 If a Claim has been resolved, the Owner will prepare or obtain appropriate documentation.

§ 21.2.5 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Owner's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Owner, (2) modify the initial Claim or (3) notify the Owner that the initial Claim stands.

§ 21.2.6 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Owner, the Owner will notify the parties in writing that the Owner's decision will be made within seven days, which decision shall be considered advisory only and not binding on the parties. Upon expiration of such time period, the Owner will render to the parties the Owner's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be 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.

§ 21.2.7 Notwithstanding anything herein to the contrary, any suit or action arising under this Contract shall be commenced in Circuit Court of DuPage County, Illinois.

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~~The Except as otherwise provided herein, the Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, 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 21.3-law.~~

...

~~§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

Intentionally omitted.

~~§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

Intentionally omitted.

~~§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which~~

it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 21.8~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

~~§ 21.7- § 21.9~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof. ~~§ 21.9~~ Intentionally omitted.

...

The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, if any, subject to the right of either party to proceed in accordance with this Article 21. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

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

- ~~1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~2 — damages incurred by the waiver includes, but is not limited to damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's Owner's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

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

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

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

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

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

§22.4 The following definitions are added to the Contract:

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

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

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

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

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

- (i) Modifications.
- (ii) Specifications.
- (iii) This Agreement except that the Supplementary Conditions shall take precedence over the General Conditions of the Contract.

#### **ARTICLE 23 • COMPLIANCE WITH LAWS**

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

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

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

- 1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or preference, marital status, national origin or ancestry, citizenship status, age, physical or mental disability unrelated to a person's ability to perform the essential functions of the job, association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
- 2) That, if it hires additional employees in order to perform this Contract or any portions thereof, it will determine the availability (in accordance with the Department's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and it will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.

- 3) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity without discrimination because of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry, citizenship status, age, physical or mental handicap or disability unrelated to a person's ability to perform the essential function of the job, or association with a person with a disability, military status or an unfavorable discharge from military service, or record of arrest.
- 4) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Department's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with the Contractor in its efforts to comply with such Act and rules and regulations, the Contractor will promptly notify the Department and the Owner and will recruit employees from other sources when necessary to fulfill its obligations thereunder.
- 5) That it will submit reports as required by the Department's rules and regulations, furnish all relevant information as may from time to time be requested by the Department or the Owner, and in all respects comply with the Illinois Human Rights Act and the Department's rules and regulations.
- 6) That it will permit access to all relevant books, records, accounts and work sites by personnel of the Owner and the Department for purposes of investigation to ascertain Department's rules and regulations.
- 7) That it will include verbatim or by reference the provisions of this clause in every subcontract it awards under which any portion of the Contract obligations are undertaken or assumed, so that such provisions will be binding upon such subcontractor. In the same manner as with other provisions of this Contract. The Contractor will be liable for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the Owner and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, the Contractor will not utilize any subcontractor declared by the Illinois Human Rights Commission to be ineligible (or contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

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

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

The Contractor is required to verify current prevailing wage prior to the first day of each month and to pay the then-current prevailing wage rate as determined by the Illinois Department of Labor. Any increases in costs to the Contractor due to the changes in the prevailing wage during the term of this Contract shall be at the expense of Contractor and not at the expense of Owner. . Current prevailing wage rates are published at the following: <http://labor.illinois.gov/>. The Contractor agrees to indemnify and hold harmless the Park District for any violations of the Prevailing Wage Act.

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

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

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

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

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

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

OAK BROOK PARK DISTRICT

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Sharon Knitter, President, Oak Brook Park District  
Board of Park Commissioners

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

**AIA® Document D401™ – 2003**

I, Nicole Karas, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:06:04 ET on 01/16/2024 under Order No. 4104243507 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, other than those additions and deletions shown in the associated Additions and Deletions Report.

*Nicole Karas*

(Signed)

(Title)

(Dated)