

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

18-011 – Village of Homer Glen – Heritage Park-Active Core

Village of Homer Glen

14240 West 151st Street

Homer Glen, Illinois 60491

THE OWNER:

(Name, legal status and address)

Village of Homer Glen

14240 West 151st Street

Homer Glen, Illinois 60491

THE ARCHITECT:

(Name, legal status and address)

Tria Architecture, Inc.

901 McClintock Drive, Suite 100

Burr Ridge, Illinois 60527

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, consist of the Invitation to Bid, Instruction to Bidders, Bid Form, Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda Schedules, Specifications, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to of the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a Change Order, 3) a Construction Change Directive, 4) an Architect's Supplemental Instruction, or 5) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements, work issued by the Architect.

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Figured dimensions shall be followed in preference to measurements by scale. All location and dimensions of the Work shall be checked against field measurements of existing conditions to be taken by the Contractor.

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.6.1 Any material specified by reference to the number, symbol or title of specific standards, such as Commercial Standards, Federal Specifications, trade association standards, or similar standards, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Instruments of Service, except as limited to type, class or grade, or modified in such reference by a given date. The standards related to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective

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professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

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

1.1.9. MISCELLANEOUS DEFINITIONS

1.1.9.1 The term "fabricated" as used throughout the Contract Documents is hereby defined to mean items specifically assembled or made of selected materials or components to meet individual design requirements.

1.1.9.2 The term "furnish" as used throughout the Contract Documents is hereby defined to mean materials or items to be provided for the Project".

1.1.9.3 The term "install" as used throughout the Contract Documents is hereby defined to mean materials or items furnished by others to be installed only. Such materials or items shall be received at the site, unloaded, stored, protected, and installed in place, including connections, auxiliary items, and other work required for a complete and functioning installation, unless any such Work is specifically excluded.

1.1.9.4 The term "provide" as used throughout the Contract Documents is hereby defined to mean "furnish and install."

1.1.9.5 The phrase "shop fabricated" or "shop made" as used throughout the Contract Documents is hereby defined as items made by the Contractor or its subcontractors in their own shop.

1.1.9.6 The words "Contractor shall" are implied and shall be so understood wherever a direction or instruction is stated in the imperative sense.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

§ 1.2.1.1 Where conflicts exist within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the more stringent, or higher quality or greater quantity requirements shall apply. Large-scale drawings take precedence over small-scale drawings, figured dimensions over scaled dimensions and noted materials over graphic representations.

§ 1.2.1.2 The specifications are of the abbreviated type and may include incomplete sentences. Omissions of phrases such as "The Contractor shall" or "conforming to the requirements of" is intentional; omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the drawings. Words in singular shall include a plural whenever applicable, or the context so indicates.

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

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

§ 1.2.3.1 In the event of conflicts or discrepancies among the following Contract Documents, interpretations will be based on the following priorities: 1) The Agreement, 2) Addenda, with those of later date having precedence over those of earlier date, 3) The General Conditions of the Contract for Construction.

§ 1.2.3.2 In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of work shall be provided in accordance with the Architect's interpretation.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The descriptive headings of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provisions following them.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 hereof

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner ~~may~~ may immediately without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the ~~reasonable~~ cost of correcting such deficiencies, ~~including Owner's expenses and including, but not limited to, attorney's fees, compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If Change Order shall be deemed signed by the Contractor for the purposes stated in Section 7.2.1 even if the Contractor fails to physically sign such Change Order. If the payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner amount, at the Owner's option, the excess shall be deducted from any payment thereafter due or shall be paid by the Contractor immediately upon demand of the Owner.~~

§ 2.5 ADDITIONAL RIGHTS

The rights stated in Article 2 shall be in addition and not in limitation of any other rights of the Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.1.1 It shall be the duty of the Contractor to verify all dimensions given on the Drawings, and to report any error or inconsistency to the Architect before commencing Work.

§ 3.2.1.2 If the Contractor finds any details, construction procedures or materials shown on the Drawings or called for in the Specifications which he believes are not satisfactory for the use shown, the Contractor shall so notify the Architect at least 5 days before bids are due. Signing of the Contract for Construction and starting Work by the Contractor shall indicate the Contractor's agreement with all details, construction, and materials so shown and/or specified and shall indicate its willingness to construct the Project in strict accordance with the Contract Documents and to guarantee the complete Project in full compliance with the Contract Documents and to correct, repair or replace Work found to be in noncompliance with the Contract Documents pursuant to the warranty provisions of the Contract Documents. By executing this contract, the Contractor further acknowledges that it has satisfied itself as to the nature and location of the Work, the general and local conditions, including those bearing upon transportation, disposal, handling and storage of materials availability of labor, water, electric power, roads and uncertainties of weather, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed prior to and during the prosecution of the Work, and all other matters which can in any way affect the Work or the cost thereof under the Contract. Any failure by the Contractor to familiarize itself with all the available information concerning these conditions will not relieve the Contractor from any obligations with respect to the Contract Documents.

§ 3.2.1.3 If additional work is required in a manner to make it impossible to produce Work of the quality required by the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request in writing a written interpretation from the Architect before proceeding with the Work in the form of a request for information. If the Contractor fails to make such a request, the Architect shall determine the quality of the work required, consistent with the Contract Documents, or which of the conflicting requirements shall govern. The Contractor shall perform the work at no additional cost to the Owner in accordance with the Architect's determination.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe 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~~ The Contractor shall promptly report to the Owner and the Architect any 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. ~~Documents.~~ The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized or should have recognized such error, inconsistency, or omission, and failed to report it to the Architect, in which case the Contractor shall not be entitled to an increase in the Contract Sum or Contract Time and the Contractor shall bear all attributable costs for correction. The Contractor agrees to release and hold harmless the Owner for errors, inconsistencies or omissions in the Contract Document.

§ 3.2.3 ~~The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall~~

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~~promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~

§ 3.2.2.1 The exactness of grades, elevations, dimensions, existing conditions, or locations given on any Drawings issued by the Architect or the work installed by other contractors, is not guaranteed by the Architect or Owner.

§ 3.2.2.2 The Contractor shall verify the accuracy of all grades, elevations, existing conditions, dimensions and locations. In all cases of interconnection of the Contractor's work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to verify all such grades, elevations, existing conditions, locations or dimensions shall be promptly rectified by him without extra cost to the Owner.

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

- (a) ~~If a specified product deviates from good construction practices.~~
- (b) ~~If following the Specifications will affect any warranties.~~
- (c) ~~Any objections which the Contractor may have to the Specifications.~~

The responsibilities imposed on the Contractor by this Section shall be in addition to, and not be limited by, any and all other provisions of these Contract Documents.

§ 3.3.2 The Contractor shall ~~engage workmen who are skilled in performing the Work and all Work shall be performed with care and skill and in a good workmanlike manner under the full time supervision of the approved superintendent described in Section 3.9.3. The Contractor shall be liable for all property damage including repairs or replacements of the Work and economic losses which proximately result from the breach of this duty. The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors~~ Subcontractors, and their agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Contractor ~~or any of its Subcontractors.~~ Contractor, any of its Subcontractors, or claiming by, through or under the Contractor, and for any damages, losses, costs, and expenses resulting from such acts or omissions.

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

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

§ 3.3.5 The Contractor shall coordinate all portions of the work with separate Owner-employed contractors, if any.

§ 3.3.6 The Contractor shall assign a competent, technically-trained office project manager to this project who shall perform all office functions including checking, approving and coordinating shop drawings and approving purchasing and disbursement pay-out requests and correspondence, and responding to Owner inquiries.

§ 3.4 LABOR AND MATERIALS

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

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

By making requests for substitutions hereunder, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall be responsible for any damages to property or injuries to persons, or to any other harm, caused by the Contractor's employees.

§ 3.4.4 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in Section 7.5.

§ 3.5 WARRANTY

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

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the Contract Documents and that the Work will be free from faults and defects and in conformance with the Contract Documents. The warranty will not be affected by the specification of any product or procedure, unless the Contractor objects promptly to such product or procedure and advises the Architect of possible substitute products or procedures which will not affect the warranty. This warranty shall not be restricted by the limitations of any manufacturer's warranty. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective in the Owner's sole discretion. Inability or refusal of the Subcontractor or supplier responsible for the defective work to

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correct such work shall not excuse the Contractor from performing under the warranty. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 Unless an alternative guaranty is specified in a particular division of the Specifications that is longer in duration than one (1) year, the Work shall be guaranteed by the Contractor against defect in material and workmanship for a period of one (1) year from the date of final completion (date of issuance of final payment to the contractor).

§ 3.6 TAXES

~~The Contractor shall pay Retail sales tax will not be included in the bid amount. The Owner is exempted by the Illinois Use Tax Act from paying any of the taxes imposed by the Act and sales to Owner are exempt by The Illinois Retailers Occupation Tax from any of the taxes imposed by the Act. The Department of Revenue of the State of Illinois under Rule No. 15, issued August 9, 1961, has declared that sales of materials to construction contractors for conversion into real estate for schools, governmental bodies, agencies and instrumentalities are not taxable retail sales. The Contractor shall be responsible for any sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~ Work.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the Contractor shall promptly notify the Architect and Owner in writing to be addressed by the Architect and Owner. If the Contractor performs Work knowing it to be contrary to any 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 damages, losses, costs and expenses attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are ~~disturbed and in no event later than 21 days after first observance of the conditions disturbed.~~ The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. The site conditions contemplated by this Section are those which are not possible to detect in the contractor's inspections pursuant to section 3.2 and include, but are not limited to, materials containing asbestos, polychlorinated biphenyl (PCB), or hazardous materials as defined in the Contract Documents.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent, English speaking superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications by the superintendent shall be confirmed in writing. Other communications by the superintendent shall be similarly confirmed on written request in each case. Failure of the superintendent to supervise the job properly shall be deemed as a default under the Contract documents as determined by the Owner with the advice of the Architect.

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

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

§ 3.9.4 The Contractor's superintendent must be dedicated solely to this project and must be at the project site each day and at all times that Work is being performed at the site, whether the work is performed by the Contractor's own forces or by any subcontractors. The superintendent must be at the project site from the first day of on-site activities until a minimum of fourteen (14) days after the date of Substantial Completion. Failure by the Contractor to provide full-time on-site supervision shall constitute grounds for termination of the Contract by the Owner with seven days written notice.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. ~~The schedule shall not exceed time limits current under the Contract Documents, shall be revised review the Contractor's Construction Schedule for the Work of the Contractor. Such Construction Schedule shall not exceed the completion dates, delivery dates or time limits included in the Contract Documents. The Construction Schedule, with the Owner's and Architect's review, shall be revised by the Contractor at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.~~

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. ~~The submittal schedule shall (1) be coordinated~~

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with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals and keep current, for the Architect's record only, a schedule of submittals (the "Submittal Schedule") which is coordinated with the Contractor's Construction Schedule and allows the Architect reasonable time, as indicated in the Contract Documents, to review submittals. Neither the Contractor's preparation of the Submittal Schedule nor the Architect's receipt or review shall modify the Contractor's responsibility to make required submittals or to do so in a timely manner to provide for review in accordance with Section 4.2.7 as modified herein.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. The Owner's or Architect's failure to respond to a submitted schedule that exceeds time limits current under the Contract Documents shall not relieve the Contractor of its obligations to meet those limits, nor shall it make the Owner or Architect liable for any of the Contractor's damages incurred as a result of increased construction time or not meeting those time limits. Similarly, the Architect's or Owner's failure to respond to a Contractor's schedule showing performance in advance of such time limits shall not create or infer any rights in favor of the Contractor for performance in advance of such time limits.

§ 3.10.4 At the time of each Application for Payment, the Contractor shall provide to the Owner and the Architect an update on the project schedule and a written status report, which includes a description of the progress of the Work and, of progress is behind schedule, the Contractor's plan to recover the original schedule. The report shall also include a summary of the Contractor's meetings with subcontractors.

§ 3.10.5 The Contractor shall hold meetings at least weekly (or at such intervals as are otherwise acceptable to the Owner and Architect at the site. The Contractor shall provide the subcontractors, Architect and the Owner with a schedule. The Contractor shall require subcontractors currently working at the site(s) to have a representative present for such meetings.

§ 3.10.6 Within twenty-one (21) days of the award of the Contract, the Contractor shall provide a written report to the Architect and the Owner that includes a list of the Contractor's suppliers, a list of materials and equipment to be purchased from suppliers and fabricators, the time required for fabrication, and the scheduled delivery dates for materials and equipment. Copies of the Contractor's purchase orders shall be delivered to the Architect and the Owner as soon as possible after receipt by the Contractor.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. ~~These~~ The foregoing, along with all operating manuals for all equipment, shall be available to the Architect and shall be at all times and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed, after completion of the Work but before the final Application for Payment.

§ 3.11.1 The Contractor shall maintain at the site(s) one record copy for the Owner and Architect the plans and specifications of concealed work, particularly concealed piping and conduit. Any deviations from conditions shown on the Contract Drawings shall be shown and dimensioned on these field record drawings. The Contractor shall develop layout drawings for concealed work that is schematically indicated on the Contract Drawings in order to have dimensioned layouts of such concealed work. This requirement does not authorize any deviations without approval of the Architect.

§ 3.11.1.1 The field information to be so marked shall include at a minimum:

- (1) Significant deviations of any nature made during construction;
- (2) Location of underground mechanical and electrical services, utilities, and appurtenances, referenced to permanent surface improvements.
- (3) Location of mechanical and electrical services, utilities, and appurtenances that are concealed in the building, referenced to accessible features of the building.

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§ 3.11.2 The Contractor shall maintain and require its subcontractors to maintain at the site(s) an accurate record of deviations and changes from the Contract Documents which occur in the work; shall indicate all such deviations and changes on reproducible transparencies of the Contract Documents; and shall turn over to the Architect upon completion of the work all such documents and information, such as final shop drawings and sketches, marked prints and similar data indicating the as-built conditions. Plumbing, HVAC and Electrical Contractors shall record all changes or deviations in their work from what appears on the Contract Documents. The electronic AutoCAD base plan backgrounds shall be furnished by the Architect. The cost of recording and transferring the changes or deviations to the transparencies shall be included in the contract price for the respective work. The as-built transparencies shall be delivered by the Contractor to the Architect prior to the final acceptance of the Project and issuance of final payment.

§ 3.11.2.1 From the field record prints of the Contract Drawings, the Contractor shall furnish and prepare on compact disk in AutoCAD format, a complete set of field record drawings, completely dimensioned to show all changes made during the course of the Work. Mechanical and Electrical field record drawing shall locate by dimensions each run of concealed pipe and conduit. Upon completion of the Work, the Contractor and each Subcontractor shall deliver and submit to the Architect a full set of all field record drawings, relating to the Work, on compact disk in AutoCAD format and two sets of full size prints.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific

deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

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

§ 3.13 USE OF SITE

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

§ 3.13.1 Only material and equipment which is to be used directly in the construction of this Project shall be brought to and stored on the job site by the Contractor. After equipment is no longer needed on this Project, it shall be promptly removed from the job site. Protection of all construction materials and equipment stored at the Job Site is the sole responsibility of the Contractor.

§ 3.13.2 The Contractor and its subcontractors, and their respective employees, agents, and consultants, shall not enter any part or portion of the building work sites when students are present without the Owner's written authorization.

§ 3.14 CUTTING AND PATCHING

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

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

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§ 3.14.3 Only tradespersons skilled and experienced in cutting and patching shall perform such work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. The Contractor shall remove and clean up hazardous materials in accordance with these General Conditions.

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

§ 3.15.3 All exterior and interior work shall be cleaned using specific materials as recommended for surfaces to be cleaned. Damage to any surfaces due to improper cleaning methods of materials shall be repaired to the satisfaction of the Architect and Owner, by the Contractor, at no cost to the Owner.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

~~§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against law. Contractor waives any right of contribution against and shall defend, indemnify and hold harmless Owner, any Owner's Representative, the Architect and their agents, consultants and employees from and against all claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a (these are collectively referred to as "claims") is caused in whole or in part by any negligent act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they any of them may be liable, regardless of whether or not such claim, damage, loss or expense it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18, otherwise reduce any other right or obligation of indemnity or contribution which would otherwise exist as to any party or person described in this Contract. The Contractor shall have exclusive responsibility to comply with the requirements of the Structural Work Act. The obligations of the Contractor under this Section 3.18.1 shall be construed to include, but not be limited to, injury or damage consequent upon failure to use or misuse by the Contractor, his agents, Sub-Contractors, and employees of any scaffold, hoist, crane, stay, ladder, support, or other mechanical contrivance erected or constructed by any person, or any or all other kinds of equipment, whether or not owned or furnished by the Owner under the requirements of the Illinois Structural Work Act. It is understood that this excludes use by Owner, Architect or his Agents or Employees.~~

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

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covenants and agrees to indemnify, defend, save and hold harmless the following indemnitees: The Village, its Architect, Board Members, officers, agents, and employees, individually and collectively, from all claims, demands, actions and the like, of every nature and description, made or instituted, by Third Parties, arising or alleged to arise out of the work under this contract, as a result of any act or omission of either the Contractor or any Subcontractor, or any of their employees or agents. Contractor and its Subcontractors shall name the Village, its Architects, Board Members, officers, agents and employees, individually and collectively, as additional insureds as primary coverage without limitation on their general liability policies. Contractor and its subcontractor/s shall furnish Owner with copies of such policies prior to beginning any Work.

§ 3.18.3 "Claims, damages, loses and expenses" as these words are used in this Contract shall be construed to include, but not be limited to (1) death, bodily injury or property damage; (2) all reasonable attorneys' fees and costs incurred in defense of the claim or in bringing an action to enforce the provision of this Indemnity or any other indemnity contained in the Contract Documents; and (3) all costs, expenses, lost time, opportunity costs, etc. incurred by the party being indemnified or its employees, agents or consultants.

§ 3.18.4 In the event that any party is requested but refuses to honor the indemnity obligations hereunder, then the party indemnifying shall, in addition to all other obligations, pay the cost of bringing any such action, including attorneys' fees, time expended by the party being indemnified and their employees in the defense of any litigation covered by this indemnity provision at their usual rates plus cost of travel, long distance telephone calls and reproduction of documents to the party requesting indemnity.

§ 3.18.5 Contractor hereby knowingly and intentionally waives the right to assert, under the case of Kotecki v. Cyclops Welding Corp., 146 Ill.2nd 155 (1991) that Contractor's liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agrees that Contractor's liability to indemnify and defend the Owner and Architect is not limited by the so called "Kotecki Cap".

§ 3.18.6 Contractor shall include in each and every contract with any and all subcontractors and/or material suppliers performing Work and require each and every subcontractor and/or material supplier performing Work to agree to be bound by all of the provisions of the Agreement for the subcontractor and/or material suppliers scope of work including 3.18.1 through 3.18.9 under the Contract Documents.

§ 3.18.7 Contractor's indemnity obligations hereunder shall, but not by way of limitation, specifically include all claims and judgments which may be made against the indemnitees under federal or state law or the law of the other governmental bodies having jurisdiction, and further, against claims and judgments arising from violation of public ordinances and requirements of governing authorities due to Contractor's or Contractor's employees method of execution of the Work.

§ 3.18.8 The indemnification provisions of this Section 3.18 are not intended to circumvent the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

§ 3.18.9 The Contractor shall indemnify and hold harmless the Owner in the event of labor or trade union conflicts or disputes between the Contractor and subcontractors and their respective employees. The Contractor shall endeavor to adjust and resolve such conflicts and disputes which affect the timely completion of the Work. Such conflicts or disputes shall not be a basis or excuse for the violation of the Contract Documents by the Contractor or its subcontractors, and shall not provide the Contractor with relief from meeting all time limits for Substantial Completion or Final Completion. Labor or trade union disputes that effect production or delivery of materials or equipment, or their installation, shall be at no cost to the Owner. The Contractor shall notify the Architect and the Owner in writing as soon as possible as to any labor or trade disputes which may affect the Work and its timely completion. In such event, the Contractor shall provide a written proposal to the Architect and the Owner which includes any comparable substitution(s) necessary to complete the Work.

§ 3.18.10 None of the foregoing provisions shall deprive the Owner or the Architect of any action, right or remedy otherwise available to them or either of them at law.

§ 3.19 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, the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which

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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 regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Owner.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

The Architect's and their consultants' services will terminate sixty (60) days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Specifications, whichever is earlier. Any work required of the Architect and their consultants after this date will be back-charged to the contractor by the Owner.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. However, this Section shall not be deemed to prohibit direct communication between the Owner and the Architect.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. The Contractor shall provide to the Architect (1) mechanics lien waivers, (2) certified payroll statements and documentation as per the Illinois Prevailing Wage Act and (3) sworn statements listing subcontractors and materialmen before issuing Payment Certificates, and if such sworn statement or waivers are not provided, the Architect's Certificates shall be conditioned upon and subject to the receipt of such waivers.

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and ~~3.12-3.12~~ or other sections of the Contract Documents. The Architect's review shall not constitute approval of safety precautions ~~or, unless otherwise specifically stated by the Architect, 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. The Contractor will give submittals to the Architect in a manner to allow for the Architect's reasonable prompt review and to allow for timely ordering of components of the Work to affect no delay in the Work.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section ~~9.10.9.10~~; however, the issuance of such final Certificate of Payment shall not bind the owner to any payment unless it accepts such final Certificate for Payment. Owner's acceptance shall not be unreasonably withheld. Additionally, the Architect shall review all warranties and related documents and provide a recommendation to the Owner as to whether they comply with the Contract Documents.

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

§ 4.2.11 The Architect will initially interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If the Contractor submits such written request to the Architect, the Contractor will simultaneously provide a copy of such request to the Owner. The Architect will consult with the Owner regarding any request by the Contractor before responding to the Contractor.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

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and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good ~~faith~~faith and in the absence of negligence.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

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

§ 5.2.1.1 In addition to the information which may be required prior to the execution of the Contract, not later than twenty-one (21) days after Notice of Award of the Contract, the Contractor shall furnish to the Owner through the Architect the names of persons or entities proposed as manufacturers for each of the products identified in the General Requirements and, where applicable, the name of the installing Subcontractor.

§ 5.2.2 ~~The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. All subcontracts between the Contractor and subcontractors shall be made in writing, shall be assignable to the Owner, and shall contain the following sentence, 'The Owner is an intended third party beneficiary of this subcontract.~~

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

§ 5.2.4 ~~The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution without written approval of the Owner. The Contractor further acknowledges and agrees that after award of the Contract to the Contractor, any savings on changes to contracts with subcontractors or substitute subcontractors will be for the benefit of the Owner and will not be used for~~

the benefit of the Contractor or to increase the Contractor's profit on the Project. The foregoing benefit to the Owner shall include any adjustment in the amount of the price of a contract to less than the quoted price of the subcontractor upon which the Contractor's fixed bid price or Contract Sum was based. Further, if a manufacturer or supplier of any machinery or equipment, including but not limited to heating and air conditioning units or systems, changes specifications or offers incentives, discounts or lower prices after award of the Contract to the Contractor, those savings will inure to the benefit of the Owner and not the Contractor, subcontractor, manufacturer or supplier.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.1 The Contractor shall be responsible for any and all Subcontractors working under him and shall carry insurance for all Subcontractors or ensure that they are carrying it for themselves so as to relieve the Owner, Architect and Architect's Consultants of any and all liability.

§ 5.3.2 The Owner and Architect assume no responsibility for overlapping or omission of parts of the Work by various Subcontractors in their Contracts with the Contractor.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. ~~If the Contractor claims that delay or additional cost is~~

~~involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. subrogation, without altering the Owner's agreement with the Contractor.~~

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.1.4 For any changes in the Work requested by the Contractor involving more than a three (3) calendar day extension of time, the Contractor shall submit critical path schedules showing the original schedule and impact of the proposed change justifying the requested extension of time. The Owner may at its option refuse the extension of time and have the Contractor perform the work within the original schedule provided all reasonable costs for completing the work including overtime and acceleration costs are included in the Change Order.

§ 7.1.5 If a proposal for additional work is requested by the Owner from the Contractor which involves additional time, at the Owner's option, the Owner may extend the completion date for that portion of the work included in the change, without extending the Contract Time for the remainder of the Work.

§ 7.1.6 Changes which involve credits to the Contract Sum shall include overhead, profit, general conditions, and bond and insurance costs.

§ 7.1.7 For any adjustments to the Contract Sum based on other than the unit price method, overhead, profit, and general conditions combined shall be calculated at the following percentages of the cost attributable to the change in the work:

- .1 For the Contractor for Work performed by the Contractor's own forces, ten percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors five percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, ten percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, five percent of the amount due the Sub-subcontractor.
- .5 Costs to which overhead, profit, and general conditions is to be applied shall be determined in accordance with Sub-Sections 7.3.6.1 through 7.3.6.5.
- .6 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any:

§ 7.1.8 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by:

- .1 A complete itemization of costs including labor, material.
- .2 Subcontractor's, Sub-subcontractor's and material suppliers for their portions of the work itemized to include labor, material.
- .3 Labor costs shall be indicated hourly wage and fringe benefits. Labor hours shall be provided for each phase of the work.
- .4 Material costs shall include unit costs and units required where applicable.

§ 7.1.9 The Contractor understands that change orders to the contract which increase or decrease the cost by \$10,000 or more, or the time of completion by 30 days or more, will require written documentation by the Owner that the changes:

- .1 were not reasonably foreseeable at the time the contract was signed;
- .2 were not within the contemplation of the contract as signed; and
- .3 are in the best interest of the Village or region and authorized by law.

§ 7.1.10 The Contractor shall provide written notice to the Architect and the Owner if overtime labor rates are included in the computation of the cost of a proposed Change Order or Construction Change Directive.

§ 7.1.11 In the event that the Contractor and the Owner do not reach agreement on a Change Order or a Construction Change Directive, the Owner may, in its discretion, delete the labor, materials and equipment that are the subject of the Change Order or the Construction Change Directive from the Work to be performed under the Contract Documents. The Owner shall receive credit from the Contractor for the labor, materials, and equipment, including Contractor overhead and profit attributable to the deleted work. The Owner may complete the deleted work through another contractor or subcontractor.

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§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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

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

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

§ 7.3.7 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, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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- .5 Additional actual costs of supervision and field office personnel directly attributable to the change. Cost of supervision, unless directly attributable to change, will not be allowable as an itemized cost for any additions (or credited for deletions) unless a change in the Contract Time is made.

Overtime when specifically authorized by the Owner shall be paid for by the Owner on the basis of a 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. Field tickets must be signed by the Owner or Architect for verification of overtime hours.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost computed in accordance with Section 7.3.7 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, increase or decrease, if any, with respect to that change. Also, 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 Applications for Payment. Overhead and profit will be included in credits to the same extent they are included in additions.

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

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

§ 7.3.11 Change Orders that result in a net decrease in or credit to the Contract Sum must include a credit to the Owner for the Contractor's overhead and profit as described in Section 7.1.7.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Owner and Architect shall be notified in writing by the Contractor of the minor change.

§ 7.5 SUBSTITUTIONS

After the award of the Contract, a request by the Contractor for a substitution of materials or equipment in place of those specified in the Contract Documents will be considered only under one or more of the following conditions:

- (a) Required for compliance with interpretation of code requirements or insurance regulations then existing.
- (b) Unavailability of specified products, through no fault of the Contractor.
- (c) Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- (d) Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required.
- (e) When it is clearly seen, in the judgment of the Architect and with the Owner's approval, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.

Substitution requests shall be written, timely, and accompanied by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

§ 7.5.1 The Owner and the Architect reserve the right to accept or reject any substitutions bid upon. If substitutions are not specifically accepted in writing, materials specified as "standard" shall be used in construction of this project.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined working day, excluding weekends and legal holidays.

§ 8.2 PROGRESS AND COMPLETION

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall bear all additional costs incurred to meet the Contract Time, which may require working overtime without additional compensation.

§ 8.2.4 The Contractor shall reimburse the Owner for all fees or expenses, including without limitation, the Architect, engineers and legal expenses, for additional services necessitated by Contractor's failure to obtain Substantial Completion within the time established in the agreement and for more than two (2) inspections for Substantial Completion or final inspection.

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner ~~pending mediation and arbitration; or by other causes that the Architect determines~~ or by other causes which the Architect and Owner determine, in their sole discretion, may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Contractor shall not be entitled to recover from the Owner, and hereby waives all rights that it or its subcontractors or any other person may otherwise have to recovery, any costs, expenses and damages of any nature that it or its subcontractors or any other person may suffer by reason of delay in the performance of the Work or any portion thereof, the extension of Contract Time granted herein being the Contractor's sole and exclusive remedy.~~

§ 8.3.3 ~~The Contractor shall not be entitled to any increase in the Contract Sum as a result of any delays in the progress of the Work. The Contractor's sole remedy for delay shall be an extension of time. This Section 8.3 does not preclude recovery of damages for or delay by either party the Owner under other provisions of the Contract Documents.~~

§ 8.3.4 Notwithstanding other provisions in this Contract, Contractor shall not be entitled to any recovery of damages arising out of any event or delay caused within Contractor's control and/or for "Acts of God", including without limitation adverse weather conditions (which shall include typical rain events that can be reasonably predicted through historical data) which prevents such early completion of the Work.

§ 8.3.5 Where a delay occurs that is beyond the Contractor's control and when the delay is not reasonably unacceptable, the Contractor has an affirmative duty to mitigate the effect of that delay on the progress of the Work. An extension of the Substantial Completion date will not be granted to the extent that the Contractor breaches said duty to mitigate.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ~~ten days~~ twenty (20) days before the Owner's submission date for the Board's review and approval of such payment at the next Board meeting or, if the Owner's Board approves otherwise, before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

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

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. However, this Section will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the Subcontract.

§ 9.3.1.3 No interest will be paid upon retention.

§ 9.3.1.4 Contractor shall submit all payment requests to the Architect for all work completed during the previous time period. Requests submitted late will not be processed until the following month. Contractor shall include the Contractor's waiver of lien for the full amount and partial subcontractor waivers of lien in the amounts of the previous payment request.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Contractor shall submit requisitions from suppliers and Subcontractors to substantiate the amounts requested on the Application for Payment for materials or equipment stored on or off site. The Owner shall have no responsibility or liability to the Contractor for the safekeeping of materials and equipment stored at the site or off the site.

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

§ 9.3.4 The Contractor shall submit his application for payment as outlined in Section 9.3 on the first of the month, and the Owner will make payment accordingly promptly after receipt of the Architect's Certificate. Each partial payment request shall be made monthly and Contractor shall request payment of ninety percent (90%) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the work less the aggregate of previous payments in each case. The Owner reserves the right to reduce retainage prior to substantial completion. Retainage shall not be reduced below 5% until all closeout documents as required in the Instruments of Service have been received and reviewed by the Architect.

§ 9.3.5 Before each certificate for payment is issued, the Contractor shall furnish to the Architect a complete statement of the amounts due to Subcontractors, parties supplying material, and for his own materials and labor, on AIA Document G702 and G702A "Application and Certificate for Payment."

§ 9.3.6 A Sworn "Contractor's Affidavit" shall be submitted with each payment request in sufficient form for the Owner to determine Contractor's right to payment and compliance with the Illinois Mechanic's Lien law. Each payment request shall include executed waivers of lien in conformity with information set forth on a properly completed Contractor's Affidavit. In the event that the Owner is satisfied with Contractor's payment procedures, the Owner may accept partial waivers of lien of Subcontractors and suppliers who were included in the immediate preceding payment. The Contractor shall submit waivers on a current basis, but the Owner may allow Subcontractors and suppliers to be not more than one payment late with their partial waivers.

§ 9.3.7 Upon giving ten (10) days' notice in writing to the Contractor, the full contract retainage may be reinstated and the retention restored to the basis established in Section 9.3.4 if the manner of completion of the work and its progress do not remain satisfactory to the Owner, or if any surety of Contractor withholds its consent.

§ 9.3.8 All material necessary for the construction of this Project, delivered upon the premises, shall not be removed from the premises without written consent of the Architect.

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§ 9.3.9 The Contractor's request for final payment shall include: (1) the Contractor's Final Lien Waiver in the full amount of the contract; and (2) final lien waivers in the full amount of their contracts from all subcontractors and suppliers for which final lien waivers have not previously been submitted.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 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 in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 The Owner shall not be required to make payment unless in its own independent judgment it accepts the Architect's Certificate.

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§ 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. In the event that the Owner elects to utilize an escrow agent, the Owner and the escrow agent may elect to make payments due the Contractor to the Contractor and its subcontractors.

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

§ 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. With respect to Work enumerated on the list accompanying the Certificate of Substantial Completion, the guarantee or warranty period shall start at the time of subsequent acceptance of this Work in writing by Owner.

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment shall be sufficient to increase the total payments to 95 percent of the contract sum, less such amounts as the Architect shall determine for incomplete work and unsettled claims.

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract

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Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents; or~~
~~.3 — terms of special warranties required by the Contract Documents.~~

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

§ 9.11 LIQUIDATED DAMAGES

The Contractor is solely responsible for substantially completing the Work by the scheduled Substantial Completion Dates for each Phase of the Work. This responsibility includes all work including that of the Contractor's forces, subcontractors and suppliers. The Contractor acknowledges that the Owner will suffer significant financial loss, and there will be disruption to the Owner if the Project is not complete on or before the Substantial Completion Date for the work set forth in the Contract Documents. The Contractor further acknowledges that the measure of such loss and the disruption to the Owner would not be susceptible to precise calculation. To protect the Owner against said loss and disruption to the Owner, the Owner and the Contractor hereby agree that the Contractor and the Contractor's Surety, if any, shall be liable for and shall pay to the Owner, Liquidated Damages of One Thousand Dollars (\$1,000) for each calendar day of delay that the Contractor has not achieved Substantial Completion. Substantial Completion for this Project refers to all scheduled Work being completed, except for minor items which does not affect beneficial occupancy and use of the Project.

§ 9.11.1 Payments of Liquidated Damages are in addition to other damages that may be incurred by the Owner and not a penalty. All such Liquidated Damages may be set-off against any monies that may be due the Contractor. The Owner's approval or making of progress payments or final payment, with or without knowledge that the Work was untimely, shall not constitute or be deemed a waiver of the Owner's rights or claims, or of the Owner's ability to receive Liquidated Damages under the Contract or common law.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.2.9 The Contractor, prior to commencing the work, shall submit to the Architect, in writing, a statement certifying that he is familiar with the Manual of Accident Prevention in Construction by the Associated General Contractors of America, current edition, and further that the Contractor will maintain at the Project a copy of said manual and will strictly enforce the applicable requirements of same. Contractor will also state the name of the Contractor's safety engineer who will be responsible for enforcing all safety requirements.

§ 10.2.10 All Work shall be performed by the Contractor in accordance with all safety rules and regulations, whether federal, state or local, including but not limited to the following:

- .1 Williams Steiger Occupational Safety & Health Act of 1970 Public Law 91 596;
- .2 Part 1910 — Occupational Safety & Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;
- .3 Part 1518 — Safety & Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

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§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.1.1 The Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept or used in or about the Projects site(s) except to the extent such Hazardous Materials: (1) are necessary for the prosecution of the Work; and (2) have been approved in writing by the Owner. Any Hazardous Materials allowed to be used on the Project site(s) shall be used, stored, and disposed of in writing as directed in writing by the Owner. Any Hazardous Materials allowed to be used in the Project site(s) shall be used, stored, and disposed of in compliance with all applicable laws relating to such Hazardous Materials. Any unused or surplus hazardous Materials, as well as, any other Hazardous Materials that have been placed, released, or discharged on the Project site(s) by the Contractor or any of its employees, agents, suppliers, or subcontractors, shall be removed from the Project site(s) at the earlier of (1) completion of the Work requiring the use of such Hazardous Materials; (2) the completion of the Work as a whole; or (3) within twenty-four (24) hours following the Owner's demand for such removal. Such removal shall be undertaken by the Contractor at its sole cost and expense and shall be performed in accordance with all applicable laws. The Contractor shall immediately notify the Owner of any release or discharge of any Hazardous Materials on the Project site(s). The Contractor shall provide the Owner with copies of all warning labels on products that the Contractor or any of its subcontractors will be using in connection with the Work, and the Contractor shall be responsible for making any and all disclosures required under applicable "Community Right to Know" or similar laws. The Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and removed from the Project site(s) in accordance with all applicable laws and regulations. The Contractor shall immediately notify the Owner of any citations, orders, or warnings issued to or received by the Contractor, or of which the Contractor otherwise becomes aware, that relate to any Hazardous Materials on the Project site(s). Without limiting any other indemnification provisions pursuant to law or specified in this Agreement, the Contractor shall indemnify, defend (at the Contractor's sole cost, and with legal counsel approved by the Owner), and hold the Owner and Architect harmless from any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses for removing and remedying the effect of any Hazardous Materials on, under, from, or about the Project site(s), arising out of or relating to, directly or indirectly, the Contractor's or its subcontractor's failures to comply with any of the requirements herein. As used herein, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of transportation Materials Table, or listed by the Environmental Protection Agency as hazardous substances, and all substances, materials, or wastes that are or become regulated under federal, state, or local law.

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

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or~~

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death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

~~Intentionally Deleted.~~

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

~~§ 11.1.2.1 The insurance required by Section 11.1.2.1 shall be written for not less than the following limits, or greater if required by law:~~

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1. Workers' Compensation, Occupational Disease and Employer's Liability Insurance:
 - a. State: Statutory limits
 - b. Applicable Federal (e.g., Longshoremen's): Statutory limits
 - c. Employer's Liability
 - \$1,000,000 Per Accident
 - \$1,000,000 Disease, Policy Limit
 - \$1,000,000 Disease, Each Employee

2. Commercial General Liability Policy.
 - a. \$2,000,000 General Aggregate
 - b. \$1,000,000 Products Completed Operations Aggregate to be maintained for 2 years after Final Completion.
 - c. \$1,000,000 Personal and Advertising Injury
 - d. \$1,000,000 Each Occurrence
 - e. \$50,000 Fire Damage (any one fire)
 - f. \$5,000 Medical Expense (any one person)

Contractual Liability:

 - a. Bodily Injury:
 - \$1,000,000 each occurrence
 - \$2,000,000 aggregate

 - b. Property Damage:
 - \$1,000,000 each occurrence
 - \$2,000,000 aggregate

Personal Injury, with Employment Exclusion deleted:

 - a. \$1,000,000 aggregate

3. Business Automobile Liability (including owned, non-owned and hired vehicles):
 - a. Automobile Liability:
 - i. Bodily injury:
 - \$1,000,000 each person
 - \$1,000,000 each occurrence
 - ii. Property Damage:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Combined Single Limit

4. Umbrella Excess Liability:
 - \$2,000,000 Over Primary Insurance

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability, automobile liability and umbrella/excess coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations arising from the Contractor's operations and such insurance policies shall state that as to the additional insureds, the policies are primary and non-contributory over any other insurance which the additional insured may carry.

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§ 11.1.5 The insurance company issuing coverage required for the performance of this Contract shall be licensed to do business in Illinois with Best's Insurance Guide (current edition) rating of "A-VII or better and satisfactory to the Owner.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

~~§ 11.3.1 Unless otherwise provided, the Owner~~The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, ~~property-builder's risk insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property-builder's risk insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.~~

~~§ 11.3.1.1 Property Builder's risk insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~

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

~~§ 11.3.1.2. The Contractor builder's risk insurance shall protect the interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work~~

~~§ 11.3.1.3 If the property-builder's risk insurance requires deductibles, the Owner-Contractor shall pay costs not covered because of such deductibles.~~

~~§ 11.3.1.4 This property-builder's risk insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner has consented to such partial occupancy and Owner's property insurance company has consented to provide coverage for the Project.. 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-lapse, gaps in, or reduction of insurance.~~

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner ~~shall~~may 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 Contractor shall be named insureds.

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§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

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binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly at the Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

~~§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. In the case of any Work performed in correcting defects pursuant to guarantees provided or referred to by this Article 12, the guarantee period shall begin anew from the date of the completion of such Work.~~

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

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negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. Notwithstanding any other term or provision in this Article 13 to the contrary, in the event that any testing or inspection of the Work or any part thereof reveals defects in materials or workmanship, then the Contractor shall remedy such defects and shall bear all costs and expenses associated with such testing which is related to determining whether such defects have been properly remedied.

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

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

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

§ 13.6 INTEREST

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Any references in this agreement to interest being assessed against the Owner are hereby deleted.~~

§ 13.8 REGULATIONS

§ 13.8.1 The Contractor and/or Subcontractor warrant/s that s/he is familiar with and s/he shall comply with Federal, State and local laws, statutes, ordinances, rules and regulations, Board Rules and Policies, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the contract including without limitation Workmen's Compensation Laws, minimum salary and wage statutes and regulations, laws with respect to permits and licenses and fees in connection therewith, laws regarding maximum working hours, and, without limitation, such other laws and regulations as are specifically described below. Additionally, Contractor and subcontractor warrant that s/he shall comply with any amendments to such Federal, State and local laws, statutes, ordinances, rules and regulations that are enacted thereafter during the performance of the Work and under this Contract. To the extent that there are any violations of any of the applicable laws, rules, regulations and/or court orders/decrees mentioned herein, Contractor and Subcontractor shall be responsible for indemnifying and holding both the Owner and Architect free and harmless from all costs, fees and expenses incurred, directly or indirectly and including without limitation attorneys' fees, by the Owner or the Architect in responding to and complying with demands made by any of the governmental departments/agencies and/or the courts, or an aggrieved employee or person and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to any compliance with the applicable laws, rules and regulations referenced herein. No plea of misunderstanding or ignorance thereof will be considered.

§ 13.8.1.1 Whenever required or upon the request of the Architect or Owner, the Contractor or subcontractor shall furnish the Architect and the Owner with satisfactory proof of compliance with said Federal, State and local laws, statutes, ordinances, rules, regulations, orders, and decrees.

§ 13.8.2 The Contractor and Subcontractors shall carefully examine the Occupational Safety and Health Act of 1970, published in May 1971, as issued by the Federal Register (OSHA), and the specific regulations governing procedures, techniques, safety precautions, equipment design, and the configuration of the same as required under this Act and the Contractor agrees as evidenced by his submission of a bid to comply with all terms of the Act and to perform and complete in a workmanlike manner all work required in full compliance with said Act. The Contractor is responsible to comply with OSHA and its regulations as amended in performing any work under the Contract Documents.

§ 13.8.3 The Contractor shall comply with the non-discrimination federal, state and local laws, including without limitation:

§ 13.8.3.1 Equal Employment Opportunities Act, American with Disabilities Act and Human Rights Act. The Contractor acknowledges that this Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act (the "Human Rights Act"), including the mandatory provisions that each contractor have in place written sexual harassment policies that shall include, at minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment under state law; (iii) a description of sexual harassment, utilizing examples; (iv) the vendor's internal complaint process including penalties; (v) the legal recourse, investigation and complaint process available through the Department and the Commission; and (vii) protection against retaliation as provided by Section 6-101 of said Act and that it has a written sexual harassment policy in place in full compliance with Section 105(A)(4) of the Human Rights Act, 775 ILCS 5/2-105(A)(4). The Contractor agrees to fully comply with the requirements of the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., including but not limited to, the provision of sexual harassment policies and procedures pursuant to Section 2-105 of the Act. The Contractor further agrees to comply with all federal Equal Employment Opportunity Laws, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq., and rules and regulations promulgated thereunder. The provisions of Section 14.2 are included in this Amendment pursuant to the requirements of the regulations of the Illinois Department of Human Rights, Title 44, Part 750, of the Illinois Administrative Code, and Contractor shall be required to comply with these provisions only if and to the extent they are applicable under the law.

§ 13.8.3.2 As required by Illinois law, in the event of the Contractor's non-compliance with the provisions of this Equal Employment Opportunity Clause, the Illinois Human Rights Act or the Rules and Regulations of the Illinois Department of Human Rights ("Department"), the 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 canceled 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, the Contractor agrees as follows:

§ 13.8.3.2.1 That it will not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, marital status, national origin or ancestry, age, citizenship, physical or mental handicap or disability, military status, unfavorable discharge from military service or arrest record status; 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.

§ 13.8.3.2.2 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, marital status, national origin or ancestry, age, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.

§ 13.8.3.2.3 That it will submit reports as required by the Department's Rules, furnish all relevant information as may from time to time be requested by the Department or the contracting agency, and in all respect comply with the Illinois Human Rights Act and the Department's Rules.

§ 13.8.3.2.4 That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Department for purposes of investigation to ascertain compliance with the Illinois Human Rights Act and the Department's Rules.

§ 13.8.3.2.5 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

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for compliance with applicable provisions of this clause by such subcontractors; and further it will promptly notify the contracting agency 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 for Contractors or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporation.

§ 13.8.4 Illinois Department of Labor Requirements and Prevailing Wage Act.

§ 13.7 TIME LIMITS ON CLAIMS

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

§ 13.8.4.1 Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Contractor shall ensure that any Subcontractors shall comply with the Illinois Prevailing Wage Act. Contractor and Subcontractors shall include in Bids the cost for the current prevailing wage. As changes are made in these prevailing wages, the Contractor and Subcontractors performing work on the project will be responsible for conforming to the changes and shall have the responsibility for determining when changes are made. No additional costs are to be incurred by the Owner as a result of changes in the prevailing wage. All record keeping requirements are the obligation of the Contractor and Subcontractors.

§ 13.8.4.2 To the extent that there are any violations of the Prevailing Wage Act and any demands are made upon the Owner, Contractor or Architect by the Illinois Department of Labor or by any employee of the Contractor or a Subcontractor performing work on the project, the Contractor or the particular Subcontractor and Contractor shall be responsible for indemnifying and holding the Owner, Contractor and Architect free and harmless from all costs incurred, directly or indirectly, by the Owner, Contractor or Architect in responding to and complying with demands made by the Department of Labor, or an aggrieved employee and such amounts may be withheld from the payments to be made on the project. It is the intention that the Owner, Contractor and Architect shall suffer no time loss or other additional expenses in complying with any inquiry made with regard to this Act.

§ 13.8.4.3 It shall be mandatory upon the Contractor and upon any Subcontractors thereof to pay all laborers, workman, and mechanics employed by them not less than the prevailing wages in the locality for each craft or type of workman or mechanic needed to perform such work and the general prevailing rate for legal holidays and overtime work as ascertained by the Illinois Department of Labor and pursuant to Illinois law and statutes in such case made and provided.

§ 13.8.4.4 The Contractor and each Subcontractor shall (1) make and keep, for a period not less than 3 years, 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; and (2) submit monthly, in person, by mail, or electronically a certified payroll to the Owner in charge of the project. The certified payroll shall consist of a complete copy of the records identified in the Prevailing Wage Act. The certified payroll shall be accompanied by a statement signed by the Contractor and/or Subcontractor which avers that: (i) 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 the Prevailing Wage Act; and (iii) the Contractor and/or Subcontractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor. Contractor is not prohibited from relying on the certification of a lower tier Subcontractor, provided the Contractor does not knowingly rely upon a Subcontractor's false certification. Any Contractor and/or Subcontractor subject to the Prevailing Wage Act who fails to submit a certified payroll or knowingly files a false certified payroll is in violation of the Prevailing Wage Act and guilty of a Class B misdemeanor. The records submitted in accordance with the Prevailing Wage Act herein shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act.

§ 13.8.4.5 Upon 2 business days' notice, the Contractor and each Subcontractor shall make available for inspection the records identified in the Prevailing Wage Act to the Owner in charge of the project, its officers and agents, and to the

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Director of Labor and his deputies and agents. Upon 2 business days' notice, the Contractor and each Subcontractor shall make such records available at all reasonable hours at a location within this State.

§ 13.8.5 Public Contract Fraud Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Contract Fraud Act (30 ILCS 545/0.01).

§ 13.8.6 Public Construction Contract Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Construction Contract Act (30 ILCS 557/1).

§ 13.8.7 Public Construction Bond Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Construction Bond Act (30 ILCS 550/0.01). If the Contractor furnishes material or labor on the project, or assume any Contracts for material or labor awarded or entered into by the Owner, Contractor first shall supply and deliver to Owner a bond conditioned upon the completion of the Contract, and the payment of such material and labor, as required by the Illinois Public Construction Bond Act. 30 ILCS 550/1 et seq.

§ 13.8.8 Public Works Preference Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Works Preference Act (30 ILCS 560/0.01).

§ 13.8.9 Employment of Illinois Workers on Public Works Act. Contractor agrees to comply with and that that his agreement is subject to and governed by the Illinois Employment of Illinois Workers on Public Works Act (30 ILCS 570/0.01).

§ 13.8.10 Public Works Contract Change Order Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Public Works Contract Change Order Act (50 ILCS 525/1).

§ 13.8.11 Local Government Professional Services Selection Act. Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Local Government Professional Services Selection Act (50 ILCS 510/0.01).

§ 13.8.12 Veterans Preference Act. The Contractor agrees to comply with and that this agreement is subject to and governed by the Illinois Veterans Preference Act (330 ILCS 55/0.01) that, in the employment and appointment to fill positions in the construction, addition to, or alteration of all public works undertaken or contracted for by the State, or by any political subdivision thereof, preference shall be given to persons who have been members of the armed forces of the United States or who, while citizens of the United States, were members of the armed forces of allies of the United States in time of hostilities with a foreign country, and have served under one or more of the following conditions: (1) the veteran served a total of at least 6 months, or (2) the veteran served for the duration of hostilities regardless of the length of engagement, or 3) the veteran served in the theater of operations but was discharged on the basis of a hardship, (4) the veteran was released from active duty basis of a hardship, or because of a service connected disability and was honorably discharged. But such preference shall be given only to those persons who are found to possess the business capacity necessary for the proper discharge of the duties of such employment. No political subdivision or person contracting for such public works is required to give preference to veterans, not residents of such Owner, over residents thereof, who are not veterans.

§ 13.8.12.1 As used in this Section: "Time of hostilities with a foreign country" means any period of time in the past, present, or future during which a declaration of war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.

§ 13.8.12.2 "Armed forces of the United States" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Law 95 202 shall also be considered service in the Armed Forces of the United States for purposes of this Section.

§ 13.8.13 Drug Free Workplace. The Contractor certifies by the execution of this Contract that the Contractor will provide a drug free workplace in compliance with the Illinois Drug Free Workplace Act (30 ILCS 580/1 et seq.), including provision of providing notifications, imposing sanctions, providing assistance with counseling, and complying with all other requirements of said Act.

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§ 13.8.14 Bid Rigging and Rotating. The Contractor certifies that the Contractor is in compliance with Illinois law and not barred from bidding on the Contract as a result of a conviction for either bid-rigging or bid rotating under Article 33E of the Criminal Code of 1961 (720 ILCS 5/33E).

§ 13.8.15 No Smoking. In accordance with the state (105 ILCS 5/10-20.5b) and federal law and Board Policy, smoking is prohibited on all Village property.

§ 13.8.16 Concurrent with the execution of this Contract, the Contractor has executed the Certificate of Eligibility.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

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

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

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors 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.

§ 14.2.1 If the Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days after the date of said filing, or if the Contractor admits in writing his inability to pay his debts generally as they become

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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 he submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if he fails to make prompt payment to Subcontractors or for materials or labor or otherwise breaches his obligations under any subcontract with a Subcontractor; or if a mechanic's or material man's lien or notice of lien is filed against any part of the Work or the site of the Project and not promptly bonded or insured over by the Contractor in a manner satisfactory to the Owner; or if the Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction of the Work or the site of the Project; or if he otherwise violates any provision of the Contract Documents; then the Owner, without prejudice to any right or remedy available to the Owner under the Contract Documents or at law or in equity, the Owner may, after giving the Contractor and the surety under the Performance Bond and under the Labor and Material Payment Bond described in Section 11.5, seven (7) days' written notice, terminate the employment of the Contractor. If requested by the Owner, the Contractor shall remove any part or all of his equipment, machinery and supplies from the site of the Project within seven (7) days after the date of such request, and in the event of the Contractor's failure to do so, the Owner shall have the right to remove or store such equipment, machinery and supplies at the Contractor's expense. In case of such termination, the Contractor shall not be entitled to receive any further payment for Work performed by the Contractor through the date of termination. The Owner's right to terminate the Owner-Contractor Agreement pursuant to this Section 14.2.1 shall be in addition to and not in limitation of any rights or remedies existing hereunder or pursuant hereto or at law or in equity.

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

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

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

~~§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the all costs to the Owner of completing the Work, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination. If such costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The amount Owner immediately upon the Owner's demand. The costs to the Owner of completing the work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The amount, if any, to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, shall be certified by the Architect, upon application, in the manner provided in Section 9.4, and this obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 The Owner may, upon seven (7) days written notice to the Contractor, terminate the Agreement between the Owner and Contractor without cause. Upon written request and submittal of the appropriate documentation as required by the Owner, the Owner shall pay the Contractor for all work performed by the Contractor to the date of termination that has been approved by the Owner. The Owner may, upon the Contractor executing such a

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confirmatory assignments as the Owner shall request, accept and assume all of the Contractor's obligations under all subcontracts executed in accordance with the terms of the Contract Documents that may accrue after the date of such termination and that the Contractor has incurred in good faith in connection with the Work. Upon receipt of notice of termination, the Contractor shall cease all operations on the date specified by the Owner, terminate subcontracts not assumed by the Owner, make no further orders of materials or equipment, complete work not terminated (if any), and provide such reports as may be requested by the Owner and the Architect as to the status of the Work and the Work remaining to be completed. The Owner's right to terminate the Contract under this Section shall be in addition to, and not in limitation of, its rights to stop the Work without terminating the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

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

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a ~~Claim-claim~~ for an increase in the Contract Time, written notice as provided herein shall be given. ~~The Contractor's Claim given within seven (7) calendar days after the event giving rise to the claim. The Contractor's claim shall include an estimate of cost and of probable effect of the delay on the progress of the Work. In the case of a continuing delay, only one Claim-delay only one claim is necessary.~~

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

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

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

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

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

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

§ 15.4 ARBITRATION

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

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

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

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

~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

~~§ 15.4.4.1 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).~~

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

ARTICLE 16 INCORPORATION OF CONTRACT TERMS WITH SUBCONTRACTORS

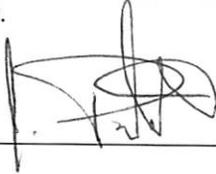
§ 16.1 Contractor agrees that it shall be responsible to incorporate all of the terms and conditions herein, including all amendments to this Contract, in any subcontracts with any and all of the Subcontractors as well require Subcontractors to include such terms and conditions in any Sub- Subcontract. Contractor acknowledges that it is the Owner's intent that all of the terms and conditions herein, including all amendments to this Contract, will be adhered to by the Contractor and all Subcontractors performing any Work in the Project.

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

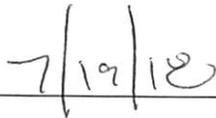
I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 18:20:39 on 07/17/2018 under Order No. 0344117200 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



(Signed)



(Title)



(Dated)