

*Village of Carol Stream*

**BOARD MEETING**

**AGENDA**

**AUGUST 1, 2016**

**7:30 P.M.**

*All matters on the Agenda may be discussed, amended and acted upon*

**A. ROLL CALL AND PLEDGE OF ALLEGIANCE:**

**B. MINUTES:**

1. Approval of Minutes of the July 18, 2016 Village Board Meeting.

**C. LISTENING POST:**

1. Resolution No. 2890 Recognizing Linda Bailey upon her Retirement from the Village of Carol Stream.
2. Resolution No. 2891 Recognizing John Jungers for his 20 Years of Service with the Village of Carol Stream Police Department.
3. Introduction of Mike Harting, Public Works Mechanic and Cesar Rodriguez, Public Works Street Division.
4. Presentation of a check donation to Operation Support Our Troops-America.
5. Addresses from Audience (3 Minutes).

**D. PUBLIC HEARINGS:**

**E. SELECTION OF CONSENT AGENDA:**

*If you are here for an item which is added to the consent agenda and approved, the Village Board has acted favorably on your request.*

**F. BOARD AND COMMISSION REPORTS:**

**G. OLD BUSINESS:**

# Village of Carol Stream

## BOARD MEETING

### AGENDA

AUGUST 1, 2016

7:30 P.M.

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#### **H. STAFF REPORTS AND RECOMMENDATIONS:**

1. Building Repair Projects on Public Works Facilities-Award of Contract. *Staff recommends to award a contract with regard to Building Repair Projects to Kellogg Brown and Root in the amount of \$145,967.28 pursuant to the provisions of section 5-8-3(B) and subsection 5-8-14(K) of the Carol Stream Code of Ordinances.*
2. Motion to authorize the Village Manager to execute a contract with MTI Construction Services for Construction Management Services at Risk in conjunction with the renovation/expansion of the existing Municipal Center/Police Station in substantial conformity with the attached documents, and with all final changes subject to the approval of the Village Manager and the Village Attorney.

#### **I. ORDINANCES:**

#### **J. RESOLUTIONS:**

1. Resolution No. \_\_\_\_ Declaring Surplus Property owned by the Village of Carol Stream. *Staff recommends designated Public Works items be declared surplus and authorized to sell or dispose of them.*

#### **K. NEW BUSINESS:**

1. Raffle License Application – Humanitarian Service Project (HSP). *The Humanitarian Service Project is asking for approval of a raffle license and to waive the raffle license fee and Manager's Fidelity Bond for a raffle to be held on September 29, 2016.*

*Village of Carol Stream*

**BOARD MEETING**

**AGENDA**

**AUGUST 1, 2016**

**7:30 P.M.**

*All matters on the Agenda may be discussed, amended and acted upon*

**L. PAYMENT OF BILLS:**

1. Regular Bills: July 19, 2016, through August 1, 2016.
2. Addendum Warrants: July 19, 2016 through August 1, 2016.

**M. REPORT OF OFFICERS:**

1. Mayor:
2. Trustees:
3. Clerk:
4. Treasurer's Report: Revenue/Expenditure Statements and Balance Sheet for the Month Ended June 30, 2016.

**N. EXECUTIVE SESSION:**

1. Pending Litigation.

**O. ADJOURNMENT:**

<b>LAST ORDINANCE</b>	<b>2016-07-34</b>	<b>LAST RESOLUTION</b>	<b>2889</b>
<b>NEXT ORDINANCE</b>	<b>2016-08-35</b>	<b>NEXT RESOLUTION</b>	<b>2890</b>

**REGULAR MEETING OF THE MAYOR AND BOARD OF TRUSTEES**  
**Gregory J. Bielawski Municipal Center, Carol Stream, DuPage County, IL**

**July 18, 2016**

Mayor Saverino, Sr. called the Regular Meeting of the Board of Trustees to order at 7:30 p.m. and directed Village Clerk Laura Czarnecki to call the roll.

Present: Mayor Frank Saverino, Sr. and Trustees David Hennessey, John LaRocca, Rick Gieser, Mary Frusolone and Matt McCarthy

Absent: Trustee Greg Schwarze

Also Present: Village Manager Joe Breinig, Assistant Village Manager Bob Mellor, Village Clerk Laura Czarnecki, Village Attorney Jim Rhodes and Assistant Village Attorney Mallory Milluzzi

\*All persons physically present at meeting unless noted otherwise

**MINUTES:**

*Trustee LaRocca moved and Trustee McCarthy made the second to approve the Minutes of the June 20, 2016 regular Board Meeting of the Village Board. The results of the roll call vote were as follows:*

*Ayes: 4 Trustees Hennessey, LaRocca, Gieser and McCarthy*

*Abstain: 1 Trustee Frusolone*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

*Trustee Hennessey moved and Trustee McCarthy made the second to approve, but not release the Minutes of the June 20, 2016 Executive Session Meeting of the Village Board. The results of the roll call vote were as follows:*

*Ayes: 4 Trustees Hennessey, LaRocca, Gieser and McCarthy*

*Abstain: 1 Trustee Frusolone*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

**LISTENING POST:**

1. Illinois State Representative Jeanne Ives and Illinois State Senator Michael Connelly-Springfield Update. *Representative Jeanne Ives and Senator Michael Connelly provided a gloomy outlook on State finances and stated nothing is getting accomplished.*
2. Resolution No. 2887 Recognizing Dan Hoffman upon his Retirement from the Village of Carol Stream Police Department. *Resolution read by Mayor Saverino, Sr.*

*Trustee McCarthy moved and Trustee LaRocca made the second to approve Resolution No. 2887 Recognizing Dan Hoffman upon his Retirement from the Village of Carol Stream Police Department.*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

3. Introduction of New Code Professional Michelle Noyes. *Michelle Noyes introduced herself to the Village Board and audience.*
4. Year of the Business Spotlight: Village Tavern & Grill, Owner Mike Coughlan. *Trustee Rick Gieser introduced Mike Coughlan, owner of Village Tavern and who described his 20 year old business in Carol Stream and giving back locally to the Christmas Sharing Program, Humanitarian Service Project, Fourth of July parade, etc.*
5. Addresses from Audience (3 Minutes). *Suzanne Hlotke commented on the recent article in the Chicago Tribune by Jake Griffith on money spent by municipalities on mosquito abatement and apparent lack of intergovernmental cooperation.*

**PUBLIC HEARINGS:**

**CONSENT AGENDA:**

*Trustee McCarthy moved and Trustee Gieser made the second to establish a Consent Agenda for this meeting. The results of the roll call vote were as follows:*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

*Trustee LaRocca moved and Trustee Frusolone made the second to place the following items on the Consent Agenda established for this meeting. The results of the roll call vote were as follows:*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

- 1.** #16140-Dermody Properties-365 E. North Avenue.
- 2.** Desktop Computer Equipment Purchase-Recommendation to Waive Competitive Bidding.
- 3.** Purchase of Two Ford F150 Pickup Trucks.
- 4.** 2016 Drainage Improvements Project-Request to Award Contract.
- 5.** 2016 Asphalt Rejuvenator Project-Request to Award Contract.
- 6.** 2016 Asphalt Restorative Sealer-Request to Waive Competitive Bids and Award Contract.
- 7.** PUSH Wellness Program.
- 8.** Collective Bargaining Agreement between the Village of Carol Stream and Illinois Fraternal Order of Police Labor Council effective May 1, 2015-April 30, 2018.
- 9.** Ordinance No. 2016-07-31 Amending the Provisions of the Carol Stream Code of Ordinances, Chapter 10, Business Licenses and Regulation, Article 10, Sexually Oriented Businesses and Chapter 11, Intoxicating Liquor, Article 2, Alcoholic Liquor Dealers.
- 10.** Ordinance No. 2016-07-32 Amending the Fiscal Year 2016/17 Village Budget to establish a WSE I Position within the Public Works Department.
- 11.** Ordinance No. 2016-07-33 Amending Chapters 9-1-5 of the Health Code and 10-6-4 of the Scavenger Licensing Code Regarding Hours of Refuse Collection from Commercial Properties.

12. Resolution No. 2888 Authorizing a Final Plat of Consolidation (Dermody Properties-365 E. North Avenue).
13. Resolution No. 2889 Declaring Surplus Property owned by the Village of Carol Stream.
14. Raffle License Application-American Cancer Society.
15. Payment of Regular and Addendum Warrant of Bills from June 21, 2016 through July 5, 2016.
16. Payment of Regular and Addendum Warrant of Bills from July 6, 2016 through July 18, 2016.

*Trustee Gieser moved and Trustee McCarthy made the second to approve the Consent Agenda for this meeting by Omnibus Vote. The results of the roll call vote were as follows:*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

*The following are brief descriptions of those items approved on the Consent Agenda for this meeting.*

**#16140-Dermody Properties-365 E. North Avenue**

**Gary/North Avenue Corridor Review**

**APPROVED SUBJECT TO CONDITIONS 6-0**

**Final Plat of Subdivision**

**RECOMMENDED APPROVAL 6-0:**

*Concur with Plan Commission recommendation.*

**Desktop Computer Equipment Purchase-Recommendation to Waive Competitive Bidding:**

*The Village Board approved waiving competitive bidding and the purchase of Desktop Computer Equipment (37 new computers) from MNJ Technologies at a cost of \$31,105.53.*

**Purchase of two Ford F150 Pickup Trucks:**

*The Village Board approved the purchase of two Ford F150 Pickup Trucks from Roesch Ford Commercial Truck Center through Suburban Purchasing Cooperative Contract #148 in the amount of \$39,980.00.*

**2016 Drainage Improvements Project-Request to Award Contract:**

*The Village Board approved a contract with regard to the 2016 Drainage Improvements Project to Norvilla, LLC at a cost of \$130,997.56.*

**2016 Asphalt Rejuvenator Project-Request to Award Contract:**

*The Village Board approved a contract with regard to the 2016 Asphalt Rejuvenator Project to American Road Maintenance for a cost not to exceed \$315,000.00.*

**2016 Asphalt Restorative Sealer-Request to Waive Competitive Bids and Award Contract:**

*The Village Board approved waiving competitive bids and awarding a contract with regard to the 2016 Asphalt Restorative Sealer Project to CAM, LLC in the amount of \$64,069.28.*

**PUSH Wellness Program:**

*The Village Board approved implementing the PUSH Wellness Program to village employees on a trial basis at a cost not to exceed \$32,000.00.*

**Collective Bargaining Agreement between the Village of Carol Stream and Illinois Fraternal Order of Police Labor Council Effective May 1, 2015-April 30, 2018:**

*The Village Board approved a 3 year labor contract between the Village and the FOP representing the Village's Police Patrol Officers which provides terms and conditions for wages, hours and working conditions.*

**Ordinance No. 2016-07-31 Amending the Provisions of the Carol Stream Code of Ordinances, Chapter 10, Business Licenses and Regulation, Article 10, Sexually Oriented Businesses and Chapter 11, Intoxicating Liquor, Article 2, Alcoholic Liquor Dealers:**

*The Village Board approved Ordinance 2016-07-31 which prohibits the sale and consumption of alcohol in sexually oriented businesses and identifying conduct prohibited in licensed premises.*

**Ordinance No. 2016-07-32 Amending the Fiscal Year 2016/17 Village Budget to Establish a WSE I position within the Public Works Department:**

*The Village Board approved the creation of a new WSE I Position within the Public Works Department and the elimination of an unfilled Water Employee position resulting in no increase in the authorized headcount.*

**Ordinance No. 2016-07-33 Amending Chapters 9-1-5 of the Health Code and 10-6-4 of the Scavenger Licensing Code Regarding Hours of Refuse Collection from Commercial Properties:**

*The Village Board approved Code Amendments which regulates Commercial Refuse Collection Hours 7am to 7pm Monday thru Friday and those few*

*Saturdays when a national holiday is observed on the preceding Monday of that same collection week.*

**Resolution No. 2888 Authorizing a Final Plat of Consolidation (Dermody Properties-365 E. North Avenue):**

*The Village Board approved a Final Plat of Consolidation for Dermody Properties located at 365 E. North Avenue.*

**Resolution No. 2889 Declaring Surplus Property owned by the Village of Carol Stream:**

*The Village Board approved designated seized vehicles as surplus and authorized its auction via America's Auto Auction Inc.*

**Raffle License Application-American Cancer Society:**

*The Village Board approved waiving the raffle license fee and Manager's fidelity Bond and issuing a raffle license to the American Cancer Society for their annual Relay for Life. This raffle was held on June 25<sup>th</sup> and was given verbal approval at the previous June 20<sup>th</sup> Village Board meeting.*

**Regular Bills and Addendum Warrant of Bills:**

*The Village Board approved payment of the Regular Bills dated July 5, 2016 in the amount of \$762,887.02. The Village Board approved the payment of the Addendum Warrant of Bills from June 21, 2016 thru July 5, 2016 in the amount of \$537,354.83.*

**Regular Bills and Addendum Warrant of Bills:**

*The Village Board approved payment of the Regular Bills dated July 18, 2016 in the amount of \$1,331,027.23. The Village Board approved the payment of the Addendum Warrant of Bills from July 6, 2016 thru July 18, 2016 in the amount of \$619,538.89.*

**Non-Consent Agenda**

**Ordinance No. 2016-07-34 Amending the Provisions of the Carol Stream Code of Ordinances, Chapter 5, Taxation and Finance, Article 8, Purchases and Contracts:**

*This item was removed from the consent agenda at the request of Trustee Hennessey.*

*The Village Attorney provided an explanation of the purpose of this code amendment to allow the Village Board to award purchase without competitive bids under certain circumstances.*

*Trustee Hennessey moved and Trustee Frusolone made the second to approve said code amendments that will allow awarding a contract for services or purchases over \$20,000 without being required to continuously waive competitive bidding.*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

**Requests by Organic Soils, Inc. for a Second Extension of the Special Use permit for a Landscape Waste Transfer Facility and for an Amendment to the Lease Agreement for Village-Owned Property at 295 Kuhn Road:**

*This item was removed from the consent agenda.*

*Mayor Saverino was critical of the length of time Organic Soils has taken to get this project started and the Village Board is taking a lot of heat from residents on this project.*

*Trustee McCarthy moved and Trustee Frusolone made the second to have staff work with Organic Soils on an amendment to lease agreement including site access and fees by August 15, 2016.*

*Ayes: 5 Trustees Hennessey, LaRocca, Gieser, Frusolone and McCarthy*

*Nays: 0*

*Absent: 1 Trustee Schwarze*

*The motion passed.*

**Report of Officers:**

*Trustee LaRocca thanked Senator Michael Connelly and Representative Jeanne Ives. Congratulations to Deputy Chief Dan Hoffman on his retirement and 28 years of service. On behalf of Trustee Schwarze, Please Shop Carol Stream.*

*Trustee Gieser thanked Senator Michael Connelly and Representative Jeanne Ives. Congratulations to Deputy Chief Dan Hoffman on his retirement and 28 years of service. Welcome new employee Michelle Noyes. Thank you to the Village of Carol Stream and Park District for the fantastic fireworks display. The July 4<sup>th</sup> parade can be seen on Comcast cable channel 6 at AT&T channel 99 on Tuesday, Thursday and Saturday at 10am, 2pm, and 8pm. Congratulations to Jeanna and RJ who announced their engagement at the parade. Mayor Saverino and Trustee Gieser will be participating in a bocce tournament this week, Wednesday with residents at Windsor Park Manor. Warriors for Emily fundraising will be at Jewel on Sunday from 11am and 3pm.*

*Trustee Hennessey thanked Senator Michael Connelly and Representative Jeanne Ives. Congratulations to Deputy Chief Dan Hoffman on his retirement and 28 years of service. The differences with Board of Trustees, local government, State and Federal government is as local government, we are beholden to only our residents and not special interest groups and fund raisers.*

*Trustee Frusolone commented that the conversation with Senator Michael Connelly and Representative Jeanne Ives was "spirited". Thank you to Village staff for their work making Thursday night concerts a success. August 6<sup>th</sup> from 10am to 2pm the Park District and Police Department are hosting a touch-a-truck event at Wheaton Bible Church and McCaslin Park.*

*Trustee McCarthy thanked Senator Michael Connelly and Representative Jeanne Ives. Congratulations to Deputy Chief Dan Hoffman on his retirement and 28 years of service. Welcome new Code Professional Michelle Noyes.*

*Village Clerk Czarnecki thanked Senator Michael Connelly and Representative Jeanne Ives. Congratulations to Deputy Chief Dan Hoffman on his retirement and 28 years of service. Please keep our troops and their families in mind.*

*Village Manager Breinig thanked all staff and volunteers for all work at events this summer. Welcome to Michelle Noyes. The Corporate Personal Property Replacement tax got swept today by the State of Illinois with the stop gap budget (approximately \$100,000).*

*Mayor Saverino expressed empathy for Senator Michael Connelly and Representative Jeanne Ives for all they have to put up with in Springfield. Congratulations to Dan Hoffman on his retirement. On July 14<sup>th</sup> Mayor Saverino attended a garden walk at Windsor Park Manor. Please purchase your vehicle sticker.*



**A RESOLUTION HONORING LINDA BAILEY  
UPON HER RETIREMENT FROM THE  
VILLAGE OF CAROL STREAM**

**WHEREAS**, Linda Bailey joined the Village of Carol Stream Community Development Department as a Permit Clerk on January 27, 1986; and

**WHEREAS**, Linda Bailey was promoted to Community Development Department Secretary on May 1, 1995; and

**WHEREAS**, Linda Bailey has served the Village diligently through the Village's most significant years of growth and development, during which time the Village's population increased from 20,000 people to 40,000 people; and

**WHEREAS**, in her duties, Linda Bailey is often the first point of contact for customers seeking services from the Community Development Department; and

**WHEREAS**, Linda Bailey provides customer service to the residents and businesses of Carol Stream with courtesy and respect; and

**WHEREAS**, Linda Bailey has embraced and been an instrumental part of the Community Development Department's transition to a customer service focused team; and

**WHEREAS**, Linda Bailey will be retiring from service after over 30 years with the Village of Carol Stream on August 5, 2016.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF CAROL STREAM, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, AS FOLLOWS:**

SECTION 1: Linda Bailey's dedication, professionalism and integrity while working for the Village of Carol Stream are hereby recognized and commended.

SECTION 2: Linda Bailey is wished the very best of happiness and health in the future.

This Resolution shall be in full force and effect from and after its passage and as approved by law.

PASSED AND APPROVED THIS 1<sup>st</sup> DAY OF AUGUST, 2016.

AYES:

NAYS:

ABSENT:

\_\_\_\_\_  
Frank Saverino, Sr., Mayor

ATTEST:

\_\_\_\_\_  
Laura Czarnecki, Village Clerk

**RESOLUTION NO. 2891**

**A RESOLUTION HONORING JOHN JUNGERS  
FOR HIS 20 YEARS OF SERVICE WITH THE  
VILLAGE OF CAROL STREAM**

**WHEREAS**, John Jungers was sworn in as a Police Officer for the Carol Stream Police Department on June 24, 1996; and

**WHEREAS**, John Jungers served in many capacities including Traffic Officer, Evidence Technician, Honor Guard, Corporal, State Certified Accident Reconstructionist and DuCART Supervisor; and

**WHEREAS**, John Jungers was promoted to Sergeant on July 19, 2004; and

**WHEREAS**, John Jungers was promoted to Commander on May 3, 2011; and

**WHEREAS**, John Jungers was promoted to Deputy Chief on April 6, 2015; and

**WHEREAS**, John Jungers has been employed as a public servant for twenty years as a Law Enforcement professional with the Village of Carol Stream Police Department.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF CAROL STREAM, on behalf of all the former and present elected and appointed officials and residents of Carol Stream, that:

SECTION 1: Deputy Chief John Jungers' service and dedication to the Village of Carol Stream and accomplishments in the field of law enforcement are hereby recognized and commended.

SECTION 2: Deputy Chief John Jungers is wished the very best of happiness and health in his future years with the Village of Carol Stream.

This Resolution shall be in full force and effect from and after its passage as approved by law.

PASSED AND APPROVED ON THIS 1st DAY OF AUGUST, 2016.

AYES:

NAYS:

ABSENT:

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Frank Saverino, Sr., Mayor

ATTEST:

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Laura Czarnecki, Village Clerk

*Village of Carol Stream*  
Interdepartmental Memo

TO: Joseph Breinig, Village Manager  
FROM: Tia Messino, Management Analyst  
DATE: July 27, 2016  
RE: Introduction – Public Works Mechanic Mike Harting

At the regular meeting on Monday, August 1, Public Works would like to introduce Mike Harting to the Village Board. Mike has been hired to serve as a Mechanic in the Fleet Division effective July 11, 2016.

Fleet Division Employees are typically assigned to repairing and maintaining the Village's fleet including but not limited to automobiles, police vehicles, public works vehicles, and public works equipment. Fleet division employees also serve as part of the emergency storm response and assist other divisions as directed.

Mike comes to us with sixteen years of experience in an independent repair shop in Elk Grove Village. He is an ASE certified automotive technician and married with a 14-month old son. Mike will serve one year as a probationary employee before having the opportunity for promotion.

*Village of Carol Stream*  
Interdepartmental Memo

TO: Joseph Breinig, Village Manager  
FROM: Tia Messino, Management Analyst  
DATE: July 27, 2016  
RE: Introduction – Public Works Employee Cesar Esqueda Rodriguez

At the regular meeting on Monday, August 1, Public Works would like to introduce Cesar Esqueda Rodriguez to the Village Board. Cesar has been hired to serve as a Public Works Employee in the Street Division effective July 18, 2016.

Street Division Public Works Employees are typically assigned to duties in street maintenance, landscaping and forestry, street sign and street light repair and maintenance, maintaining above-ground storm sewer facilities and snow and ice control.

Cesar comes to us with experience in landscape maintenance and was hired after impressing his supervisor with his work as a Seasonal employee this summer. He is married and a recent Carol Stream resident. Cesar will serve one year as a probationary employee before having the opportunity for promotion to the position of Public Works Employee II.

*Village of Carol Stream*  
Interdepartmental Memo

TO: Joe Breinig, Village Manager

FROM: Philip J. Modaff, Director of Public Works 

DATE: July 22, 2016

RE: Agenda Item – Recommendation to Award a Contract with Regard to Building Repair Projects to Kellogg Brown and Root in the Amount of \$145,967.28, Pursuant to the Provisions of Section 5-8-3(B) and subsection 5-8-14(K) of the Carol Stream Code of Ordinances

The FY2017 budget contains funding for several building repair projects on Public works facilities:

- replacement of the roof over the mechanic supervisor office, parts room and store room
- repair of the roof and interior ceiling damage at the Fullerton Avenue well house
- replacement of gutter/facia/soffit on several Public Works Center buildings and minor maintenance on the gutters on the south garage

Through the DuPage County Job Order Contract with Kellogg Brown & Root (KBR LLC) we have secured a competitive proposal to establish a scope of work, secure a contractor to construct the improvements and to provide construction oversight services for these three individual projects in the total amount of \$151,967.28. Following a request by staff, KBR has agreed that if the Village packages the three projects into one contract the total price can be reduced by \$6,000.00, for a new project total of \$145,967.28. The FY17 budget includes a total of \$146,000.00 for all three projects.

Job Order Contracting (JOC) is similar to joint purchasing of products, where one agency will seek bids for certain products (such as vehicles and road salt) and other governmental agencies are allowed under State statute to take advantage of the contract pricing. The process for selecting a JOC contractor includes a rigorous Request for Proposals (RFP) process which solicits unit pricing on thousands of work types and items. Following a review process of pricing and qualifications of participating contractors a JOC contract is awarded and allows that general contractor to be available for a wide variety of construction projects.

Over the past several years the Village has utilized the JOC programs offered through both the City of Naperville and DuPage County. Recently the Village awarded work to two different JOC contractors for garage floor resurfacing at the Public Works Center and for roof replacement at the WRC. The Village Attorney has previously reviewed the Job Order Contract document

format and staff has prepared the attached local contract to apply specifically to the Village's requirements.

As discussed in the past there are multiple benefits which make the JOC process attractive for some projects. For these projects in particular the JOC process is beneficial in the following ways:

- Saves consultant expense in development of detailed specifications that staff is not qualified to develop;
- Saves staff time in preparation of bid documents and the expense of advertising bids;
- Saves staff time in hosting pre-bid conferences/site tours, responding to bidder inquiries, preparation and distribution of bid addendums, reviewing bids, checking reference and preparing bid tabulations;
- Reduces exposure to potential change orders as a result of failure to accurately define scope and specifications.

Public Works staff provided the JOC contract project manager with a general work scope and the JOC contractor has prepared the attached detailed scope of work and cost proposal for each of the three projects.

Staff recommends awarding a contract with regard to Building Repair Projects to Kellogg Brown and Root in the amount of \$145,967.28, pursuant to the provisions of Section 5-8-3(B) and subsection 5-8-14(K) of the Carol Stream Code of Ordinances.

Attachments

## **JOB ORDER CONTRACT**

**JOB ORDER NUMBER:** CS-02-16  
**JOB ORDER NAME:** Village of Carol Stream - Building Repair Projects  
**CONTRACTOR NAME:** Kellogg Brown & Root LLC (KBR LLC)  
**LOCATION:** Public Works Center Roof- 124 Gerzevske Lane  
Fullerton Ave. Well House - 550 Fullerton Avenue  
Public Works Center Gutters/Soffits/Fascia

This JOB ORDER CONTRACT is made and entered into this 1<sup>st</sup> day of August, 2016, by and between the Village of Carol Stream (hereinafter the "Village") and Kellogg Brown & Root LLC (hereinafter "Contractor").

### **RECITALS**

WHEREAS, the County of DuPage, Illinois is authorized to work with National Intergovernmental Purchasing Alliance (National IPA) in a Principal Procurement Agency (PPA) capacity to secure multi-state volume purchasing contracts; and

WHEREAS the County of DuPage, Illinois published Request for Proposal #P11-003, received and reviewed proposals and awarded Job Order Contract Number CP-001-12 to Contractor; and

WHEREAS the County of DuPage, Illinois on January 12, 2016, exercised its option to extend the contract term for an additional year ending December 31, 2016; and

WHEREAS, the Village desires to proceed with building repair projects including the replacement of the roof on the Mechanic office area at the Public Works Center, repair of the roof and ceiling at the Fullerton Avenue Well House, and repair and replacement of gutters, soffits and fascia at the Public Works Center (all three hereinafter referred to as the "Projects") through the County of DuPage's Cooperative Purchasing Master Agreement for Job Order Contracting and to purchase construction services and materials under the general terms and provisions of the County of DuPage Contract Number CP-001-12, including all addenda issued thereto; and

WHEREAS, the Contractor has agreed to provide such construction services and materials for the Projects under the general terms and provisions of the County of DuPage Contract Number CP-001-12, including all addenda issued thereto; and

WHEREAS, the Contractor has provided the Village with a proposal, which proposal has been incorporated into the Detail Scope of Work, Job Order Number CS-02-16, dated May 26, 2016, a copy of which is attached hereto as Exhibit A.

NOW THEREFORE, in consideration of the terms and conditions of this Job Order Contract Number CS-02-16, the parties hereto agree as follows:

1. The terms and conditions of this Job Order Contract Number CS-02-16 shall be governed by and shall include all terms and provisions of the County of DuPage Contract Number CP-001-12, including all addenda issued thereto, and shall be incorporated into the terms, conditions and provisions of Job Order Contract Number CS-02-16 between the parties hereto except as modified as follows:

- A. The Scope of Work, including all labor and materials, for this Job Order Contract Number CS-02-16 and the cost of such work is hereby set forth in Exhibit A attached hereto.
- B. Whenever within Job Order Contract Number CS-02-16 the terms Agency, City or Owner are used, those terms shall mean the Village of Carol Stream.
- C. Prior to commencement of construction, Contractor shall provide the Village with both a Payment and Performance Bond in the amount of \$145,967.28 from a surety acceptable to the Village and in accordance with the terms set forth in AIA Document A312TM – 2011.
- D. Prior to commencement of construction, the Contractor shall provide the Village with a Certificate of Insurance for the Insurance and at such limits as set forth in County of DuPage Contract Number CP-001-12. The Commercial General Liability and Automobile Liability policies shall contain or be endorsed to contain the Village, its officers, agents and employees as Insured and shall be primary insurance and not contribute with the Village's insurance or self-insurance. The Worker's Compensation insurer shall waive all rights of subrogation against the Village for injuries to employees of the Insured resulting from the work for the Village or use of the Village's premises or facilities.
- E. This Job Order Contract is subject to the provisions of the Prevailing Wage Act, 820 ILCS 130/01 et seq. and labor prices shall be based upon the prevailing wages in the DuPage County area as determined by the Illinois Department of Labor. The Contractor shall

indemnify, hold harmless and defend the Village from any failure of the Contractor to comply with the provisions of the Prevailing Wage Act.

- F. Contractor will be required to maintain all records and documents for the project in compliance with the Freedom of Information Act, 5ILCS 140/4 et seq. In addition, Contractor shall produce, without cost to the village, any records which are responsive to a request received by the Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the timeframes required. If additional time is necessary to compile records in response to a request, then Contractor shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act, based upon Contractor's failure to produce documents or otherwise appropriately respond to a request under the Act, then Contractor shall indemnify and hold harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorney fees and penalties.
- G. The Contractor shall warrant the Projects to be free from defects in materials and workmanship for a period of 1 year from the date of final acceptance of the completed project by the Village; provided however, that all materials that have a manufacturer's warranty in excess of 1 year shall be warranted for the full period of the manufacturer's warranty, which warranty shall be transferred to the Village on the date of final acceptance of the completed project.
- H. The Contractor shall secure all building permits for the Projects within ten (10) days after the date of execution of the Contract by both Parties and the Contractor shall complete the Project within eighty (80) days thereafter.
- I. Payment of 90% of the Contract Price shall be made upon completion of the project and the balance paid within thirty (30) days of completion of any "punch list" items required and final acceptance of the work by the Village. There shall be no Economic Price Adjustments to this Contract.

J. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be given in writing at the addresses set forth below, by any of the following means: (1) personal service, (2) overnight courier, or (3) registered or certified mail, postage prepaid, return receipt requested.

If to Village: Director of Public Works  
Village of Carol Stream  
500 North Gary Avenue  
Carol Stream, Illinois 60188

If to Developer: KBR  
1123 Wilkes Blvd., Suite 110  
Columbia, Missouri 65201

ACCEPTED:

**(Village Seal)**

**VILLAGE OF CAROL STREAM**

Attest:

By: \_\_\_\_\_  
Village Clerk

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

**(Corporate Seal)**

**CORPORATE NAME**

Attest:

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

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

**SUBSCRIBED AND SWORN BEFORE ME**

This \_\_\_\_\_ day of \_\_\_\_\_, 2016

MY COMMISSION EXPIRES: \_\_\_\_\_

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

Contract #: CP-001-12  
Job Order #: CS-02-16

**KBR**  
Industrial Services - On Call Construction  
Proposal Cover Sheet

1123 Wilkes Blvd. Suite 110  
Columbia Missouri, 65201  
Phone: 573.441.0365  
Fax: 573.441.0364

**PROJECT DATA:**

RFP # CS-02-16  
Subject: Cost Estimate  
Title: PW gutters, PW roof, Pump house  
  
Location: Carol Stream  
Date: May 26, 2016

**COST DATA:**

(2012 RS Means Facilities Construction Cost Data)

Total RS Means Bare Cost Pricing

PW Gutters	\$95,957.71
PW Roof	\$44,924.13
Pump house roof	\$11,085.44

**Subtotal** **\$151,967.28**

If all three jobs are awarded deduct \$6000.00 from the total. (\$6,000.00)

<b>DuPage County Coefficient</b>	<b>1.2084</b>	<b>\$145,967.28</b>
Revisions (if needed)		\$0.00
<b>Total Direct Cost</b>		<b>\$145,967.28</b>

**GRAND TOTAL** **\$145,967.28**

**PERFORMANCE DATA:**

Construction Performance Period: **80 Calendar Days From NTP**  
Write Subcontracts: **5 Calendar Days From NTP**  
Submittals: **5 Calendar Days From NTP**

Weather Restrictions: **According to NOAA per NIPA DuPage County General Conditions**  
Other Restrictions: **NONE**

**SUPPORTING DATA:**

- A. Scope Of Work
- B. Detailed List of Prepriced Items

The Village of Carol Stream

Attention: Phil Modaff

Date: 29 Apr 16

Project No: CS-02-16

Subject: PW roof replacement

Contract: Job Order Contracting Services

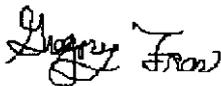
Mr. Modaff,

Contingent upon receipt of a signed delivery order to formally obligate KBR, this transmits our proposal to accomplish the subject work, inclusive of the attached proposed scope of work and cost estimate.

This work is limited to the removal of the membrane, vapor barrier, insulation, and flashing. Provide and install two layers of 2" rigid insulation, 50MIL white PVC welded roof, and new flashing. Roof top unit will have to be disconnected and raised to complete the roof.

No other work is implied or covered by this proposal.

Sincerely,



---

Gregory Frer  
Project Leader

Attachments: Cost Summary Sheet  
Scope of work  
Proposal cost details

**KBR**

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**Industrial Services, On Call Construction**

Contract #: CP-001-12  
Job Order #: CS-02-16

**KBR**  
Industrial Services - On Call Construction  
Proposal Cover Sheet

1123 Wilkes Blvd. Suite 110  
Columbia Missouri, 65201  
Phone: 573.441.0365  
Fax: 573.441.0364

**PROJECT DATA:**

RFP # CS-02-16  
Subject: Cost Estimate  
Title: PW roof replacement  
  
Location: Carol Stream  
Date: April 29, 2016

**COST DATA:**

(2012 RS Means Facilities Construction Cost Data)

Total RS Means Bare Cost Pricing		\$37,176.54
<b>Subtotal</b>		<b>\$37,176.54</b>
<b>DuPage County Coefficient</b>	<b>1.2084</b>	<b>\$44,924.13</b>
Revisions (if needed)		\$0.00
<b>Total Direct Cost</b>		<b>\$44,924.13</b>
Non Prepriced Line Items		
Subtotal		\$0.00
x Non Prepriced Coefficient	0.25	0.00
<b>Non Prepriced Subtotal</b>		<b>\$0.00</b>
<b>GRAND TOTAL</b>		<b>\$44,924.13</b>

**PERFORMANCE DATA:**

Construction Performance Period: **80 Calendar Days From NTP**  
Write Subcontracts: **5 Calendar Days From NTP**  
Submittals: **5 Calendar Days From NTP**

Weather Restrictions: **According to NOAA per NIPA DuPage County General Conditions**  
Other Restrictions: **NONE**

**SUPPORTING DATA:**

- A. Scope Of Work
- B. Detailed List of Prepriced Items

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-02-16  
**TITLE:** PW Roof Replacement

- 1.0 In accordance with KBR JOC Specifications, the City of Carol Stream and General and Special Conditions, State and Local Building Codes, the contractor shall furnish all labor, materials, tools, supervision, equipment, transportation, insurances, overhead, and all other items of expense or service necessary for and incidental to construction of this project as indicated on the provided drawings and specifications.

Contract General and Special Conditions are located within the contract Master Agreement.

ALL QUESTIONS OR CONCERNS ARE TO BE DIRECTED TO KBR VIA Greg Frer at greg.frer@kbr.com or by calling 630-391-8828. Contractors are not to inquire or seek information from Architects, Consultants or Carol Stream personnel. All questions or concerns are to be addressed via RFI to KBR.

The work includes but is not limited to the following:

Work will be conducted under normal business hours during the week.

The road will need to be closed for any crane picks during the project.

Permits are required but paid for by the customer. This project is based prevailing or union wage and tax exempt.

Dumpster/s to be provided by KBR.

### GENERAL NOTES:

- 1.0.1 After the issuance of a Notice-to-Proceed (NTP) and a signed contract from KBR, subcontractors shall submit for approval all required submittals as listed in the provided submittal log of the project specification, and/or paragraph 3.0 of this document, prior to the purchasing and installation of such items.
- 1.0.2 Prior to the commencement of any work any and all subcontractors shall submit to KBR their individual progress schedule for approval and for the incorporation into a Master Progress Schedule to be provided to the client for tracking purposes.
- 1.0.3 All contractors will provide KBR with a scope clarification letter that explicitly identifies the task included in their base and or alternate bids where applicable. All contractors will provide KBR with a list of lower tier subcontractors, material suppliers, and employees expected to perform work under their supervision during this project. All contractors will provide KBR with an itemized breakdown of labor and equipment rates to be used if change orders are to be processed and issued.
- 1.0.4 Permits are required on this project.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-02-16  
**TITLE:** PW Roof Replacement

- 1.0.5 Safety plans shall consider all possible work activities, appropriate safety considerations, and all OSHA and KBR safety rules and regulations. Each contractor must have a current Safety Plan on file with KBR prior to commencing work.
- 1.0.6 Subcontractor shall provide a daily report to KBR at the beginning of the following business day. KBR will provide blank forms to subcontractor to be filled out if necessary.
- 1.0.7 **Daily clean-up is mandatory. Each trade is responsible for the clean up of associated debris.** Remove all debris from the building and place in either an approved on-site dumpster or to an approved landfill located off of the owner's property. No owner trash receptacles shall be used at any time during the performance of the requested work by the subcontractor. All hallways, stairwells, corridors and elevators will be cleaned daily where construction traffic is evident.
- 1.0.8 Subcontractor is responsible for the protection of Carol Stream facilities and services during demolition and construction. Any Carol Stream property, facilities or services damaged during demolition or construction activities it is the sole responsibility of the Subcontractor to restore these to like or better condition at no additional cost to Carol Stream or KBR.
- 1.0.9 Unforeseen Site Conditions encountered by the subcontractor are to be brought to the immediate attention of KBR Project Management Staff. Upon notification, an on site meeting with Carol Stream and KBR Staff will be held to evaluate the situation and determine the appropriate methods and costs associated to remedy the condition. The subcontractor will be allowed an opportunity to price the additional work if needed. It is the responsibility of each performing contractor to receive a Change Order Proposal Request, initiated either by KBR or at the request of the performing contractor, followed by a Change Order Proposal and an approved Change Order prior to commencing work. Failure to comply with this directive will result in the nullification of any Change Order Proposal or Change Order Request for additional work. Unauthorized additional work will not be compensated.
- 1.0.10 Security, safety and storage of all materials and equipment are the sole responsibility of the subcontractor. If an on-site storage container or area is approved, KBR and Carol Stream assume no responsibility for the protection or security of the container, storage area or the contents therein.
- 1.0.11 The subcontractor will coordinate access to the property through KBR, and the subcontractor shall not make any type of arrangements with Carol Stream personnel.
- 1.0.12 Arrangement for parking and/or parking permitting is the responsibility of the subcontractor. The subcontractor shall verify parking conditions of the project site prior to bid.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-02-16  
**TITLE:** PW Roof Replacement

### Included but not limited to:

#### 1.1 Roof: 07000

- 1.1.1 Full time fall protection requirements are required when working on a leading edge unless a fall arrest rail system is used and within the OSHA guidelines.
- 1.1.2 Provide a crane and crew to hoist material on the roof and to raise and lower the roof top unit.
- 1.1.3 Provide dumpsters or waiting truck and remove demolish material from the grounds.
- 1.1.4 Cut away existing sheet material, barriers, and insulation (existing is two layers of approximately 5" thick plus taper) and remove.
- 1.1.5 Provide and install mechanically fastened two (2) layers of 2" iso-board rigid insulation on all flat roof surfaces using screws and plates with staggered seams covering the entire roof meeting the minimum code value and using the existing deck slope as needed for drainage to strainer.
- 1.1.6 Provide and install to manufacturer recommendation approximately 1500SF, 50 mil, white welded PVC, (Duro-Last) along all flat surfaces and up curbs, pipes, and the side/parapet walls. Membrane to be mechanically fastened at 28" intervals with manufacturer fasteners, stress plates, and two (2) 2-way breather vents. Roof to be inspected by a third party manufacturer's representative for warranty.
- 1.1.7 Provide flashing as needed for stacks and curbs. Membrane will be installed over the eve wall and up the metal siding wall.
- 1.1.8 Remove existing and provide and install one (1) metal leaf guard.
- 1.1.9 Provide labor and crane to remove duct work, LO/TO electrical, and disconnect the gas Line and hoist the RTU. When the unit is off the curb, wrap the membrane up the curb, seam and seal it and place the AHU back in its place and reconnect. Test after reconnection.

#### 2.0 DRAWINGS, SKETCHES, AND SPECIFICATIONS:

- 2.1 Clarifications/Special Considerations: No lead or asbestos removal or encapsulation or environmental remediation, curb removal/replacement, or painting is included in this scope of work.
- 2.2 Salvageable/Repairable Materials for Reuse: As specified in the provided specification and drawings.
- 2.3 Submittal Requirements: As required in the provided project specification submittals log, paragraph 1.0.1 of this document, and paragraph 3.0 of this document.
- 2.4 Schedules: All applicable trades shall provide a complete and accurate Progress Schedule to KBR staff within five (5) business days upon receipt of a signed contract with KBR. Progress Schedule shall reflect actual work in place completion dates to include long lead time and delivery of specialized equipment and material.
- 2.5 Supervisory of Construction: All applicable trades shall provide the name and phone number (cell number) of the on-site superintendent responsible for all on-going work activities as well as a list of all persons scheduled to perform work on site.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-02-16  
**TITLE:** PW Roof Replacement

- 2.6 Drawings and Sketches: As required by the provided specification in Division 1 General Requirements.
- 2.7 Extra Stock of Material: N/A

### 3.0 SUBMITTALS:

- 3.1 **Roofing Submittals – Including but not limited to:**
  - 3.1.1 Membrane product data, warranty from manufacturer, caulk, flashing color unless like in kind and fall protection plan.
  - 3.1.2 Safety Plan-MSDS
  - 3.1.3 Schedule of Values
  - 3.1.4 Progress schedule
  - 3.1.5 Certified payroll submitted weekly
  - 3.1.6 List of lower-tier subcontractors (if applicable)
  - 3.1.7 List of material suppliers
  - 3.1.8 Itemized breakdown of labor and equipment rates
  - 3.1.9 Items listed in submittal log of project specification
  - 3.1.10 Closeout documents – warranty letters

### 4.0 Project Documents:

- 4.1 Project Specifications– None
- 4.2 Architectural Documents – None
- 4.3 Plumbing and Fire Protection Documents –None
- 4.4 Mechanical Documents – Lift plan
- 4.5 Electrical Documents – None



**Final Estimate**

Greg Frer  
KBR

CP-001-12 - 2012 DuPage County, IL IPA JOC - Basic Contract Year -  
1/01/2012 to 12/31/2012  
PW roof - CS-02-16

Estimator: Greg Frer

PW roof

**Division Summary (MF04)**

01 - General Requirements	\$8,651.18	26 - Electrical	
02 - Existing Conditions	\$1,913.00	27 - Communications	
03 - Concrete		28 - Electronic Safety and Security	
04 - Masonry		31 - Earthwork	
05 - Metals		32 - Exterior Improvements	
06 - Wood, Plastics, and Composites	\$190.15	33 - Utilities	
07 - Thermal and Moisture Protection	\$18,469.05	34 - Transportation	
08 - Openings	\$2,102.50	35 - Waterway and Marine Transportation	
09 - Finishes		41 - Material Processing and Handling Equipment	
10 - Specialties		44 - Pollution Control Equipment	
11 - Equipment		46 - Water and Wastewater Equipment	
12 - Furnishings		48 - Electric Power Generation	
13 - Special Construction		Alternate	\$5,343.95
14 - Conveying Equipment		Trades	
21 - Fire Suppression		Assemblies	
22 - Plumbing	\$516.71	FMR	
23 - Heating, Ventilating, and Air-Conditioning (HVAC)		<b>MF04 Total (Without totaling components)</b>	<b>\$37,176.54</b>

**Totalling Components**

Subtotal	\$37,176.54	2012 DuPage County, IL IPA JOC Standard (20.8400%)	\$7,747.59
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**Material, Labor, and Equipment Totals (No Totalling Components)**

Material:	\$14,616.05
Labor:	\$19,414.74
Equipment:	\$3,145.75
Other:	\$0.00
Laborhours:	356.31
Green Line Items:	\$6,362.25

**Priced/Non-Priced**

Total Priced Items:	38	\$37,176.54	
Total Non-Priced Items:	0	\$0.00	0.00%
	38	\$37,176.54	

**Grand Total \$44,924.13**

**Final Estimate**

Estimator: Greg Frer

PW roof

Item	Description	UM	Quantity	Unit Cost	Total	Book	
<b>01 - General Requirements</b>							
1	01-21-53-50-1450-L Factors, cost adjustments, add to construction costs for particular job requirements, material handling and storage limitation, add. maximum Line item is for general loss time for elevated work for labor and/or material handling.	Costs	41,420.4600	7.0000%	\$2,899.43	RSM16eFAC L, B	P
2	01-54-19-50-0100 Daily crane crews, for small jobs, portal to portal, truck-mounted hydraulic crane, Two crane picks for bringing material up and down.	Day	2.0000	\$1,295.00	\$2,590.00	RSM16eFAC L, E, B	P
3	01-54-23-80-4000 Staging aids, and fall protection equipment, nylon full body harness, lanyard and rope grab, buy Harnesses for workers for leading edge work.	Ea.	4.0000	\$175.00	\$700.00	RSM16eFAC M, B	P
4	01-54-33-40-0170-1 Hourly operating cost for general equipment rental, without operators, aerial lift, telescoping boom to 40' high, 500 lbs. capacity, diesel Hourly operating costs for the lift.	Ea.	24.0000	\$13.50	\$324.00	RSM16eFAC E, B	P
5	01-54-36-50-2000 Mobilization, up to 25 mile haul distance, 50 miles round trip for mobilization or demobilization crew, truck-mounted crane up to 75 ton, driver only, one-way Lifts mob and de-mob.	Ea.	4.0000	\$51.50	\$206.00	RSM11FAC L, B	P
6	01-56-13-60-0400 Taraulins, reinforced polyethylene, 5.5 mils thick, clear Misc. plastic for the project.	S.F.	125.0000	\$0.19	\$23.75	RSM16eFAC M, B	P
7	01-56-23-10-0850 Barricades, stock units, traffic cones, PVC, 28" high Cones for traffic for around the work area and lift areas.	Ea.	16.0000	\$20.50	\$328.00	RSM16eFAC M, B	P
8	01-56-23-10-1200 Barricades, guardrail, portable metal with base pads, buy Fall protection for the roofers. Set up and take down is included in the line item.	L.F.	100.0000	\$15.55	\$1,555.00	RSM16eFAC M, B	P
9	01-56-23-10-1300 Barricades, barricade tape, polyethylene, 7 mil, 3" wide x 500' long roll Roll of caution tape.	Ea.	1.0000	\$25.00	\$25.00	RSM16eFAC M, B	P
<b>01 - General Requirements Total</b>						<b>\$8,651.18</b>	
<b>02 - Existing Conditions</b>							
10	02-41-19-19-0800 Selective demolition, rubbish handling, the following are to be added to the demolition prices. Dumpster, weekly rental, includes one dump per week, 30 C.Y. capacity, 7 tons Dumpsters for projecL	Week	1.5000	\$730.00	\$1,095.00	RSM16eFAC M, B	P
11	02-41-19-19-2005 Selective demolition, rubbish handling, the following are to be added to the demolition prices. Load, haul, dump and return, 0' to 50' haul, wheeled Get material to the dumpster. One dumpster.	C.Y.	20.0000	\$16.40	\$328.00	RSM16eFAC L, B	P
12	02-41-19-19-2045 Selective demolition, rubbish handling, the following are to be added to the demolition prices. Load, haul, dump and return, 0' to 100' haul, wheeled Get material to the dumpster, to 100 LF. One dumpster.	C.Y.	20.0000	\$24.50	\$490.00	RSM16eFAC L, B	P

**Final Estimate**

**PW roof**

**Estimator: Greg Frer**

**02 - Existing Conditions**

Item	Description	UM	Quantity	Unit Cost	Total	Book
<b>02 - Existing Conditions Total</b>						<b>\$1,913.00</b>
<b>06 - Wood, Plastics, and Composites</b>						
13	06-05-23-40-0100 Sheet metal screws, steel, standard, #8 x 3/4", galvanized One boxm C is 100 count.	C	1.0000	\$2.95	\$2.95	RSM16eFAC M, B P
14	06-16-36-10-0302 Sheathing, plywood on roofs, CDX, 3/4" thick Plywood as needed for project.	S.F.	120.0000	\$1.56	\$187.20	RSM16eFAC M, L, B P
<b>06 - Wood, Plastics, and Composites Total</b>						<b>\$190.15</b>
<b>07 - Thermal and Moisture Protection</b>						
15	07-05-05-10-0220 Selective demolition, thermal and moisture protection, flashing, sheet metal Remove counter flashing.	S.F.	300.0000	\$1.05	\$315.00	RSM16eFAC L, B P
16	07-05-05-10-3125 Selective demolition, thermal and moisture protection, roofing, felt paper, #30 Removal of existing roof, Sq is 100 square feet, three layers.	Sq.	45.0000	\$10.10	\$454.50	RSM16eFAC L, B P
17	07-05-05-10-3370 Selective demolition, thermal and moisture protection, roofing, modified bitumen Removal of existing roof, Sq is 100 square feet.	Sq.	45.0000	\$59.00	\$2,655.00	RSM16eFAC L, B P
18	07-22-16-10-1725 Roof deck insulation, excluding fastening, polyisocyanurate, 2 lbs per C.F. density, 2" thick New insulation, two layers.	S.F.	3,000.0000	\$1.05	\$3,150.00	RSM16eFAC Grn, M, L, B P
19	07-22-16-10-1765 Roof deck insulation, excluding fastening, polyisocyanurate, 2 lbs per C.F. density, tapered for drainage Tapering for drainage to strainers.	B.F.	1,500.0000	\$0.77	\$1,155.00	RSM16eFAC Grn, M, L, B P
20	07-26-10-10-0700 Vapor retarders, polyethylene vapor barrier, standard, 4 mil Vaper barrier, Sq is 100 square feet.	Sq.	45.0000	\$13.05	\$587.25	RSM16eFAC Grn, M, L, B P
21	07-54-19-10-6850 Polyvinyl-chloride roofing (PVC), heat welded seams, reinforced, 48 mils, 0.33 psf, fully adhered with adhesive New roofing material, there is no 50 MIL in the book, include building up on parapet walls and double material at the seams.	Sq.	15.0000	\$219.95	\$3,299.25	RSM16eFAC M, L, E, B P
22	07-62-10-10-1300 Sheet metal cladding, vinyl coated aluminum, up to 6 bends, window sill Line item is used to tooth/cut sheet metal siding on the roof along the existing siding before them termination bar can be secured.	L.F.	75.0000	\$6.94	\$520.50	RSM16eFAC M, L, B P
23	07-65-10-10-0060 Sheet metal flashing and counter flashing, including up to 4 bends, aluminum, mill finish, .019" thick New counter flashing, faced.	S.F.	200.0000	\$3.55	\$710.00	RSM16eFAC M, L, B P
24	07-65-10-10-0060-0400 Sheet metal flashing and counter flashing, painted finish, add (Modified using	S.F.	200.0000	\$0.32	\$64.00	RSM16eFAC M, B P

**Final Estimate**

**PW roof**

**Estimator: Greg Frer**

**07 - Thermal and Moisture Protection**

Item	Description	UM	Quantity	Unit Cost	Total	Book
	Adder for painted counter flashing.					
25	07-71-19-30-0600 Fascia, steel, galvanized and enameled, stock, no furring, short panels New flashing/coping.	S.F.	325.0000	\$9.83	\$3,194.75	RSM16eFAC M, L, B P
26	07-71-43-10-0020 Drip edge, rake edge, ice belts, aluminum, .016" thick, 5" wide, mill finish Flashing over termination bars.	L.F.	220.0000	\$1.54	\$338.80	RSM16eFAC M, L, B P
27	07-72-73-10-0100 Pitch pockets, variable sizes, adjustable, 4" to 7", welded corners, 4" deep Line item is for the extra work for bringing the PVC roof up the curbs for termination.	Ea.	25.0000	\$23.40	\$585.00	RSM16eFAC M, L, B P
28	07-92-13-20-3900 Caulking and sealant options, polyurethane, 1 or 2 component, bulk. In place, 1" x 1" Sealing the PVC roofing material on curbs and walls.	L.F.	500.0000	\$2.86	\$1,430.00	RSM16eFAC M, L, B P
<b>07 - Thermal and Moisture Protection Total</b>						<b>\$18,459.05</b>

**08 - Openings**

29	08-71-21-10-1000 Exterior mouldings, astragals, one piece, overlapping, aluminum, flat, 1/8" x 2" Line item is for termination bars for roof material up siding wall and on all curbs.	L.F.	250.0000	\$8.41	\$2,102.50	RSM16eFAC M, L, B P
<b>08 - Openings Total</b>						<b>\$2,102.50</b>

**22 - Plumbing**

30	22-14-26-13-3900 Roof drains, roof, flat metal deck, cast iron body, 12" cast iron dome, 4" pipe New roof drain.	Ea.	1.0000	\$490.50	\$490.50	RSM16eFAC M, L, B P
31	22-14-26-13-3900-1120 Labor adjustment factors, add to labor for elevated installation, above floor level, 20" to 24.5' high (Modified using 22-01-02-20-1120) Roof drain line modifier.	Ea.	1.0000	\$16.38	\$16.38	RSM16eFAC L, B P
32	22-14-26-13-3900-4220 Labor adjustment factors, add to labor for working in existing occupied buildings, factory or warehouse (Modified using 22-01-02-20-4220) Line item modifier.	Ea.	1.0000	\$9.83	\$9.83	RSM16eFAC L, B P
<b>22 - Plumbing Total</b>						<b>\$516.71</b>

**Alternate**

33	01-54-33-40-0170-2 Rent per day for general equipment rental, without operators, aerial lift, telescoping boom, gas, to 40' high, 500 lb. capacity Rental for lift for wood on perimeter and flashing work. I added per the Means book \$48.90 dollars per hour for 24 hours, divided by three days is \$391.20.	Ea.	3.0000	\$692.40	\$2,077.20	CUSTOM L, E, B P
34	07-22-16-10-1735 Roof deck insulation, polyisocyanurate, 2 lbs per C.F. density, 2-1/2" thick	S.F.	3,000.0000	\$0.28	\$840.00	CUSTOM Gr, L, B P

**Final Estimate**

**Estimator: Greg Frer**

**PW roof**

**Alternate**

Item	Description	UM	Quantity	Unit Cost	Total	Book
35	07-22-16-10-1765 Removal of existing insulation. used 2 1/2" because existing depth varies. Roof deck insulation, polyisocyanurate, 2 lbs per C.F. density, tapered for Tapering for drainage strainers, removal.	B.F.	3,000.0000	\$0.21	\$630.00	CUSTOM Gr, L, B P
36	08-71-21-10-1000 Exterior mouldings, astragals, one piece, overlapping, aluminum, flat, 1/8" x 2" Line item is for removal of termination bars for roof material. Labor only.	L.F.	75.0000	\$3.83	\$287.25	CUSTOM L, B P
37	22-14-26-13-3900 Roof drains, roof, flat metal deck, cast iron body, 12" cast iron dome, 4" pipe Remove one roof drain, labor only, material has been removed.	Ea.	1.0000	\$59.50	\$59.50	CUSTOM L, B P
38	23-74-33-10-1120 Rooftop air conditioners, including standard controls, curb, and economizer, single zone, electric cool, gas heat, 4 ton cooling, 95 MBH heating Line item is for a mechanic to disassemble and asseble the unit, duct work, gas line, and electrical so it can be raised for the roof work. The line is for labor only, material has been removed from the line item.	Ea.	1.0000	\$1,450.00	\$1,450.00	CUSTOM L, B P
<b>Alternate Total</b>						<b>\$5,343.95</b>

**Estimate Grand Total**

**44,924.13**

The Village of Carol Stream

Attention: Phil Modaff

Date: 29 Apr 16

Project No: CS-03-16

Subject: Pump house roof

Contract: Job Order Contracting Services

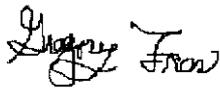
Mr. Modaff,

Contingent upon receipt of a signed delivery order to formally obligate KBR, this transmits our proposal to accomplish the subject work, inclusive of the attached proposed scope of work and cost estimate.

This work is limited to the remove and replace shingles, underlayment, ice and water shield, flashing, fascia, and repair the existing cupola from leaking. Remove and replace gutters and down spouts. Remove mold drywall, repair large voids and add drywall as needed, prime and paint the ceiling.

No other work is implied or covered by this proposal.

Sincerely,



---

Gregory Frer  
Project Leader

Attachments: Cost Summary Sheet  
Scope of work  
Proposal cost details

**KBR**

---

**Industrial Services, On Call Construction**

Contract #: CP-001-12  
Job Order #: CS-03-16

**KBR**  
Industrial Services - On Call Construction  
Proposal Cover Sheet

1123 Wilkes Blvd. Suite 110  
Columbia Missouri, 65201  
Phone: 573.441.0365  
Fax: 573.441.0364

**PROJECT DATA:**

RFP # CS-03-16  
Subject: Cost Estimate  
Title: Pump house roof  
  
Location: Carol Stream  
Date: April 29, 2016

**COST DATA:**

(2012) RS Means Facilities Construction Cost Data)

Total RS Means Bare Cost Pricing		\$9,173.65
<b>Subtotal</b>		<b>\$9,173.65</b>
<b>DuPage County Coefficient</b>	<b>1.2084</b>	<b>\$11,085.44</b>
Revisions (if needed)		\$0.00
<b>Total Direct Cost</b>		<b>\$11,085.44</b>
Non Prepriced Line Items		
Subtotal		\$0.00
x Non Prepriced Coefficient	0.25	0.00
<b>Non Prepriced Subtotal</b>		<b>\$0.00</b>
<b>GRAND TOTAL</b>		<b>\$11,085.44</b>

**PERFORMANCE DATA:**

Construction Performance Period: **80 Calendar Days From NTP**  
Write Subcontracts: **5 Calendar Days From NTP**  
Submittals: **5 Calendar Days From NTP**

Weather Restrictions: **According to NOAA per NIPA DuPage County General Conditions**  
Other Restrictions: **NONE**

**SUPPORTING DATA:**

- A. Scope Of Work
- B. Detailed List of Prepriced Items

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-03-16  
**TITLE:** Pump house roof replacement

- 1.0 In accordance with KBR JOC Specifications, the City of Carol Stream and General and Special Conditions, State and Local Building Codes, the contractor shall furnish all labor, materials, tools, supervision, equipment, transportation, insurances, overhead, and all other items of expense or service necessary for and incidental to construction of this project as indicated on the provided drawings and specifications.

Contract General and Special Conditions are located within the contract Master Agreement.

ALL QUESTIONS OR CONCERNS ARE TO BE DIRECTED TO KBR VIA Greg Frer at greg.frer@kbr.com or by calling 630-391-8828. Contractors are not to inquire or seek information from Architects, Consultants or Carol Stream personnel. All questions or concerns are to be addressed via RFI to KBR.

The work includes but is not limited to the following:

Work will be conducted under normal business hours during the week.

Permits are required but paid for by the customer. This project is based prevailing or union wage and tax exempt.

Dumpster/s to be provided by KBR.

### GENERAL NOTES:

- 1.0.1 After the issuance of a Notice-to-Proceed (NTP) and a signed contract from KBR, subcontractors shall submit for approval all required submittals as listed in the provided submittal log of the project specification, and/or paragraph 3.0 of this document, prior to the purchasing and installation of such items.
- 1.0.2 Prior to the commencement of any work any and all subcontractors shall submit to KBR their individual progress schedule for approval and for the incorporation into a Master Progress Schedule to be provided to the client for tracking purposes.
- 1.0.3 All contractors will provide KBR with a scope clarification letter that explicitly identifies the task included in their base and or alternate bids where applicable. All contractors will provide KBR with a list of lower tier subcontractors, material suppliers, and employees expected to perform work under their supervision during this project. All contractors will provide KBR with an itemized breakdown of labor and equipment rates to be used if change orders are to be processed and issued.
- 1.0.4 Permits are required on this project.
- 1.0.5 Safety plans shall consider all possible work activities, appropriate safety considerations, and all OSHA and KBR safety rules and regulations. Each

## SCOPE OF WORK

DATE: 4/29/16  
RFP No: CS-03-16  
TITLE: Pump house roof replacement

- contractor must have a current Safety Plan on file with KBR prior to commencing work.
- 1.0.6 Subcontractor shall provide a daily report to KBR at the beginning of the following business day. KBR will provide blank forms to subcontractor to be filled out if necessary.
  - 1.0.7 **Daily clean-up is mandatory. Each trade is responsible for the clean up of associated debris.** Remove all debris from the building and place in either an approved on-site dumpster or to an approved landfill located off of the owner's property. No owner trash receptacles shall be used at any time during the performance of the requested work by the subcontractor. All hallways, stairwells, corridors and elevators will be cleaned daily where construction traffic is evident.
  - 1.0.8 Subcontractor is responsible for the protection of Carol Stream facilities and services during demolition and construction. Any Carol Stream property, facilities or services damaged during demolition or construction activities it is the sole responsibility of the Subcontractor to restore these to like or better condition at no additional cost to Carol Stream or KBR.
  - 1.0.9 Unforeseen Site Conditions encountered by the subcontractor are to be brought to the immediate attention of KBR Project Management Staff. Upon notification, an on site meeting with Carol Stream and KBR Staff will be held to evaluate the situation and determine the appropriate methods and costs associated to remedy the condition. The subcontractor will be allowed an opportunity to price the additional work if needed. It is the responsibility of each performing contractor to receive a Change Order Proposal Request, initiated either by KBR or at the request of the performing contractor, followed by a Change Order Proposal and an approved Change Order prior to commencing work. Failure to comply with this directive will result in the nullification of any Change Order Proposal or Change Order Request for additional work. Unauthorized additional work will not be compensated.
  - 1.0.10 Security, safety and storage of all materials and equipment are the sole responsibility of the subcontractor. If an on-site storage container or area is approved, KBR and Carol Stream assume no responsibility for the protection or security of the container, storage area or the contents therein.
  - 1.0.11 The subcontractor will coordinate access to the property through KBR, and the subcontractor shall not make any type of arrangements with Carol Stream personnel.
  - 1.0.12 Arrangement for parking and/or parking permitting is the responsibility of the subcontractor. The subcontractor shall verify parking conditions of the project site prior to bid.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-03-16  
**TITLE:** Pump house roof replacement

### **Included but not limited to:**

#### **1.1 Pump house: Roofing 07000**

- 1.1.1 Full time fall protection requirements are required when working on a leading edge unless a fall arrest rail system is used and within the OSHA guidelines.
- 1.1.2 Provide dumpsters as needed for the removal of existing shingles.
- 1.1.3 Remove one layer of existing shingles down to sheathing, re-nail any loose boards.
- 1.1.4 Provide and install Grace ice and water shield 6' up from eaves and at wall junctions.
- 1.1.5 Provide and install approximately 150 LF of bronze aluminum drip edge. Cover remaining area with underlayment.
- 1.1.6 Provide and install approximately 750 SF (7.5 Squares) or GAF Timberline HD or OC TruDef Duration architectural shingles. Hand nail each tab with 5, 1 1/4" galvanized roofing nails, 10 per shingle.
- 1.1.7 Provide and install painted aluminum baby tin flashings laced into courses of shingles at pitched wall junctions and replace existing siding to facilitate new tins.
- 1.1.8 Provide and install new flashing and seal two gable vents.

#### **07000 Gutters and downspouts**

- 1.1.9 Provide and install approximately 60 LF of .32 gauge 5" bronze seamless aluminum gutters and flashing, installed on brackets 16" on center.
- 1.1.10 Provide and install approximately 25 LF 3" x 4" bronze aluminum downspouts. There will be two drops.
- 1.1.11 Clean up and remove debris from the site.

#### **09000 Finishes**

- 1.2.1. Provide labor and cut out existing mold/water damaged drywall and add new drywall.
- 1.2.2. Provide labor to scrape existing chipped paint. Apply joint compound to new drywall and voids in the ceiling (not over scraped areas).
- 1.2.3. Apply one (1) coat of primer over joint compound areas.
- 1.2.4. Apply one (1) top coat of paint over primed areas, apply to the entire ceiling one (1) final top coat, included is the wood frame around the louver. No walls are included. Color to match existing.

#### **2.0 DRAWINGS, SKETCHES, AND SPECIFICATIONS:**

- 2.1 Clarifications/Special Considerations: No lead or asbestos removal or encapsulation, painting of the walls, or repair or replacement of the ceiling louver is included in this scope of work.
- 2.2 Salvageable/Repairable Materials for Reuse: As specified in the provided specification and drawings.
- 2.3 Submittal Requirements: As required in the provided project specification submittals log, paragraph 1.0.1 of this document, and paragraph 3.0 of this document.
- 2.4 Schedules: All applicable trades shall provide a complete and accurate Progress Schedule to KBR staff within five (5) business days upon receipt of a signed contract with KBR. Progress Schedule shall reflect actual work in place completion dates to include long lead time and delivery of specialized equipment and material.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-03-16  
**TITLE:** Pump house roof replacement

- 2.5 Supervisory of Construction: All applicable trades shall provide the name and phone number (cell number) of the on-site superintendent responsible for all on-going work activities as well as a list of all persons scheduled to perform work on site.
- 2.6 Drawings and Sketches: As required by the provided specification in Division 1 General Requirements.
- 2.7 Extra Stock of Material: N/A

### 3.0 SUBMITTALS:

- 3.1 **Roofing Submittals – Including but not limited to:**
  - 3.1.1 Aluminum color and shingles product data.
  - 3.1.2 Safety Plan-MSDS
  - 3.1.3 Schedule of Values
  - 3.1.4 Progress schedule
  - 3.1.5 Certified payroll submitted weekly
  - 3.1.6 List of lower-tier subcontractors (if applicable)
  - 3.1.7 List of material suppliers
  - 3.1.8 Itemized breakdown of labor and equipment rates
  - 3.1.9 Items listed in submittal log of project specification
  - 3.1.10 Closeout documents – warranty letters

### 4.0 Project Documents:

- 4.1 **Project Specifications– None**
- 4.2 **Architectural Documents – None**
- 4.3 **Plumbing and Fire Protection Documents –None**
- 4.4 **Mechanical Documents – None**
- 4.5 **Electrical Documents – None**



**Final Estimate**

Greg Frer  
KBR

CP-001-12 - 2012 DuPage County, IL IPA JOC - Basic Contract Year -  
1/01/2012 to 12/31/2012  
CS Pump house - CS-03-16

**Estimator: Greg Frer**

**CS Pump house**

**Division Summary (MF04)**

01 - General Requirements	\$384.00	26 - Electrical	
02 - Existing Conditions	\$730.00	27 - Communications	
03 - Concrete		28 - Electronic Safety and Security	
04 - Masonry		31 - Earthwork	
05 - Metals		32 - Exterior Improvements	
06 - Wood, Plastics, and Composites		33 - Utilities	
07 - Thermal and Moisture Protection	\$5,295.92	34 - Transportation	
08 - Openings		35 - Waterway and Marine Transportation	
09 - Finishes	\$294.25	41 - Material Processing and Handling Equipment	
10 - Specialties		44 - Pollution Control Equipment	
11 - Equipment		46 - Water and Wastewater Equipment	
12 - Furnishings		48 - Electric Power Generation	
13 - Special Construction		Alternate	\$2,489.48
14 - Conveying Equipment		Trades	
21 - Fire Suppression		Assemblies	
22 - Plumbing		FMR	
23 - Heating, Ventilating, and Air-Conditioning (HVAC)		<b>MF04 Total (Without totalling components)</b>	<b>\$9,173.85</b>

**Totalling Components**

Subtotal	\$9,173.65	2012 DuPage County, IL IPA JOC Standard (20.8400%)	\$1,911.79
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**Material, Labor, and Equipment Totals (No Totalling Components)**

Material:	\$4,284.89
Labor:	\$4,888.76
Equipment:	\$0.00
Other:	\$0.00
Laborhours:	77.37
Green Line Items:12	\$286.25

**Priced/Non-Priced**

Total Priced Items:	33	\$9,173.65	
Total Non-Priced Items:	0	\$0.00	0.00%
	33	\$9,173.65	

**Grand Total** **\$11,085.44**

**Final Estimate**

**CS Pump house**

Estimator: Greg Frer

Item	Description	UM	Quantity	Unit Cost	Total	Book
<b>01 - General Requirements</b>						
1	01-56-13-60-0050 Tarpaulins, cotton duck, 10 ounce to 13.13 ounce per S.Y., 30' x 30' Floor protection.	S.F.	600.0000	\$0.64	\$384.00	RSM16eFAC M, B P
<b>01 - General Requirements Total</b>						<b>\$384.00</b>
<b>02 - Existing Conditions</b>						
2	02-41-19-19-0800 Selective demolition, rubbish handling, the following are to be added to the demolition prices. Dumpster, weekly rental, includes one dump per week, 30 C.Y. capacity, 7 tons One dumpster for the project.	Week	1.0000	\$730.00	\$730.00	RSM16eFAC M, B P
<b>02 - Existing Conditions Total</b>						<b>\$730.00</b>
<b>07 - Thermal and Moisture Protection</b>						
3	07-31-13-10-0500 Asphalt roof shingles, premium, laminated multi-layered shingles, class A, 300 to 385 lbs per square New shingles.	Sq.	7.5000	\$352.00	\$2,640.00	RSM16eFAC M, L, B P
4	07-31-13-10-0825 Asphalt roof shingles, #30 felt underlayment Felt paper, butts to the ice and water shield.	Sq.	5.7000	\$16.05	\$91.49	RSM16eFAC M, L, B P
5	07-31-13-10-0900 Asphalt roof shingles, ridge shingles Shingles at the peak of the roof.	L.F.	40.0000	\$3.21	\$128.40	RSM16eFAC M, L, B P
6	07-31-13-10-9000 Asphalt roof shingles, minimum labor/equipment charge	Job	1.0000	\$111.00	\$111.00	RSM16eFAC L, B P
7	07-42-13-20-3650 Aluminum siding panels, flashing, end wall, .040" thick Flashing roof to wall.	L.F.	80.0000	\$5.36	\$428.80	RSM16eFAC M, L, B P
8	07-42-13-20-9000 Aluminum siding panels, minimum labor/equipment charge Tin flashing by cupola.	Job	1.0000	\$129.00	\$129.00	RSM16eFAC L, B P
9	07-65-19-10-7600 Plastic sheet flashing and counter flashing, polyvinyl chloride, black, 30 mil ice and water shield, butts to felt paper.	S.F.	180.0000	\$1.51	\$271.80	RSM16eFAC M, L, B P
10	07-71-23-10-0400 Downspouts, aluminum, 3" x 4", .024" thick, enameled	L.F.	25.0000	\$5.64	\$141.00	RSM16eFAC M, L, B P
11	07-71-23-10-9000 Downspouts, minimum labor/equipment charge Two drops.	Job	1.0000	\$115.00	\$115.00	RSM16eFAC L, B P
12	07-71-23-20-0300 Downspout elbows, aluminum, 3" x 4", .025" thick, enameled For the drops, 90's	Ea	6.0000	\$8.33	\$49.98	RSM16eFAC M, L, B P

**Final Estimate**

**CS Pump house**

**Estimator: Greg Frer**

**07 - Thermal and Moisture Protection**

Item	Description	UM	Quantity	Unit Cost	Total	Book	
13 07-71-23-30-0400	Gutters, aluminum, stock units, 5" K type, .032" thick, enameled Gutters.	L.F.	60.0000	\$7.25	\$435.00	RSM16eFAC M, L, B	P
14 07-71-23-30-9000	Gutters, minimum labor/equipment charge Gutters.	Job	1.0000	\$122.00	\$122.00	RSM16eFAC L, B	P
15 07-71-43-10-0320	Drip edge, rake edge, ice belts, aluminum, .016" thick, 5" wide, vented, painted Drip edge.	L.F.	145.0000	\$3.21	\$465.45	RSM16eFAC M, L, B	P
16 07-71-43-10-9000	Drip edge, rake edge, ice belts, minimum labor/equipment charge Drip edge.	Job	1.0000	\$97.00	\$97.00	RSM16eFAC L, B	P
17 07-92-13-20-3500	Caulking and sealant options, polyurethane, 1 or 2 component, bulk, in place, 1/4" x 1/4" Caulking.	L.F.	50.0000	\$1.40	\$70.00	RSM16eFAC M, L, B	P
<b>07 - Thermal and Moisture Protection Total</b>						<b>\$5,295.92</b>	

**09 - Finishes**

18 09-29-10-30-3550-5200	Gypsum board, for work over 8' high, add (Modified using 09-29-10-30-5200) Line adder.	S.F.	32.0000	\$0.25	\$8.00	RSM16eFAC L, B	P
19 09-91-23-74-0200	Walls and ceilings, interior, zero VOC latex, concrete, dry wall or plaster, latex, primer or sealer coat, smooth finish, brushwork Primer brush work	S.F.	15.0000	\$0.35	\$5.25	RSM16eFAC Grn, M, L, B	P
20 09-91-23-74-0200-1800	Walls and ceilings, interior, zero VOC latex, for ceiling installations, add (Modified using 09-91-23-74-1800) Line item add.	S.F.	15.0000	\$0.07	\$1.05	RSM16eFAC Grn, L, B	P
21 09-91-23-74-0200-8200	Walls and ceilings, interior, zero VOC latex, for work 8' to 15' high, add (Modified using 09-91-23-74-8200) All work is over 8'.	S.F.	15.0000	\$0.03	\$0.45	RSM16eFAC Grn, L, B	P
22 09-91-23-74-0240	Walls and ceilings, interior, zero VOC latex, concrete, dry wall or plaster, latex, primer or sealer coat, smooth finish, roller Primer.	S.F.	25.0000	\$0.30	\$7.50	RSM16eFAC Grn, M, L, B	P
23 09-91-23-74-0240-1800	Walls and ceilings, interior, zero VOC latex, for ceiling installations, add (Modified using 09-91-23-74-1800) Line item add.	S.F.	25.0000	\$0.06	\$1.50	RSM16eFAC Grn, L, B	P
24 09-91-23-74-0240-8200	Walls and ceilings, interior, zero VOC latex, for work 8' to 15' high, add (Modified using 09-91-23-74-8200) Work over 8' high.	S.F.	25.0000	\$0.02	\$0.50	RSM16eFAC Grn, L, B	P
25 09-91-23-74-0400	Walls and ceilings, interior, zero voc latex, concrete, dry wall or plaster, latex, paint one coat, smooth finish, brushwork	S.F.	40.0000	\$0.35	\$14.00	RSM16eFAC Grn, M, L, B	P

**Final Estimate**

**CS Pump house**

**Estimator: Greg Frer**

**09 - Finishes**

Item	Description	UM	Quantity	Unit Cost	Total	Book
Paint.						
26	09-91-23-74-0400-1800 Walls and ceilings, interior, zero VOC latex, for ceiling installations, add (Modified using 09-91-23-74-1800) Line item add.	S.F.	40.0000	\$0.07	\$2.80	RSM16eFAC Gm, L, B P
27	09-91-23-74-0400-8200 Walls and ceilings, interior, zero VOC latex, for work 8' to 15' high, add (Modified using 09-91-23-74-8200) Work over 8'.	S.F.	40.0000	\$0.03	\$1.20	RSM16eFAC Gm, L, B P
28	09-91-23-74-0440 Walls and ceilings, interior, zero voc latex, concrete, dry wall or plaster, latex, paint one coat, smooth finish, roller Final coat.	S.F.	600.0000	\$0.33	\$198.00	RSM16eFAC Gm, M, L, B P
29	09-91-23-74-0440-1800 Walls and ceilings, interior, zero VOC latex, for ceiling installations, add (Modified using 09-91-23-74-1800) Line item add.	S.F.	600.0000	\$0.06	\$36.00	RSM16eFAC Gm, L, B P
30	09-91-23-74-0440-8200 Walls and ceilings, interior, zero VOC latex, for work 8' to 15' high, add (Modified using 09-91-23-74-8200) Work over 8'.	S.F.	600.0000	\$0.03	\$18.00	RSM16eFAC Gm, L, B P
<b>09 - Finishes Total</b>						<b>\$294.25</b>

**Alternate**

31	06-16-36-10-0202 Sheathing, plywood on roofs, CDX, 5/8" thick Plywood for roof and ground.	S.F.	200.0000	\$1.44	\$288.00	CUSTOM M, L, B P
32	07-31-13-10-0500 Asphalt roof shingles, premium, laminated multi-layered shingles, class A, 300 to 385 lbs per square Removal of existing shingles, material has been removed, line item is for labor only.	Sq.	7.0000	\$111.00	\$777.00	CUSTOM L, B P
33	09-29-10-30-2050 Gypsum board, on walls and ceilings, nailed or screwed to studs, 5/8" thick, on walls, standard, taped and finished, level 4 finish New drywall, one sheet. I modified this line item to reflect the budget cost for the scrapping, sanding, removal of mold drywall	S.F.	32.0000	\$43.89	\$1,404.48	CUSTOM M, L, B P
<b>Alternate Total</b>						<b>\$2,469.48</b>

**Estimate Grand Total**

**11,085.44**

The Village of Carol Stream

Attention: Phil Modaff

Date: 29 Apr 16

Project No: CS-04-16

Subject: PW gutters

Contract: Job Order Contracting Services

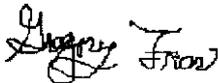
Mr. Modaff,

Contingent upon receipt of a signed delivery order to formally obligate KBR, this transmits our proposal to accomplish the subject work, inclusive of the attached proposed scope of work and cost estimate.

This work is limited to peel back the existing roof material remove and replace box gutters, downspouts, fascia, soffits and re-secure the existing roof and seal the existing gutters on the adjacent buildings so they don't leak.

No other work is implied or covered by this proposal.

Sincerely,



---

Gregory Frer  
Project Leader

Attachments: Cost Summary Sheet  
Scope of work  
Proposal cost details

**KBR**

---

**Industrial Services, On Call Construction**

Contract #: CP-001-12  
Job Order #: CS-04-16

**KBR**  
Industrial Services - On Call Construction  
Proposal Cover Sheet

1123 Wilkes Blvd. Suite 110  
Columbia Missouri, 65201  
Phone: 573.441.0365  
Fax: 573.441.0364

**PROJECT DATA:**

RFP # CS-04-16  
Subject: Cost Estimate  
Title: PW gutters

Location: Carol Stream  
Date: April 29, 2016

**COST DATA:**

(2012 RS Means Facilities Construction Cost Data)

Total RS Means Bare Cost Pricing \$79,408.90

**Subtotal \$79,408.90**

**DuPage County Coefficient 1.2084 \$95,957.71**

Revisions (if needed) \$0.00

**Total Direct Cost \$95,957.71**

Non Prepriced Line Items

Subtotal \$0.00

x Non Prepriced Coefficient 0.25 0.00

**Non Prepriced Subtotal \$0.00**

**GRAND TOTAL \$95,957.71**

**PERFORMANCE DATA:**

Construction Performance Period: **80 Calendar Days From NTP**  
Write Subcontracts: **5 Calendar Days From NTP**  
Submittals: **5 Calendar Days From NTP**

Weather Restrictions: **According to NOAA per NIPA DuPage County General Conditions**  
Other Restrictions: **NONE**

**SUPPORTING DATA:**

- A. Scope Of Work
- B. Detailed List of Prepriced Items

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-04-16  
**TITLE:** PW gutters

- 1.0 In accordance with KBR JOC Specifications, the City of Carol Stream and General and Special Conditions, State and Local Building Codes, the contractor shall furnish all labor, materials, tools, supervision, equipment, transportation, insurances, overhead, and all other items of expense or service necessary for and incidental to construction of this project as indicated on the provided drawings and specifications.

Contract General and Special Conditions are located within the contract Master Agreement.

ALL QUESTIONS OR CONCERNS ARE TO BE DIRECTED TO KBR VIA Greg Frer at greg.frer@kbr.com or by calling 630-391-8828. Contractors are not to inquire or seek information from Architects, Consultants or Carol Stream personnel. All questions or concerns are to be addressed via RFI to KBR.

The work includes but is not limited to the following:

Work will be conducted under normal business hours during the week.

Permits are required but paid for by the customer. This project is based prevailing or union wage and tax exempt.

Dumpster/s to be provided by KBR.

### GENERAL NOTES:

- 1.0.1 After the issuance of a Notice-to-Proceed (NTP) and a signed contract from KBR, subcontractors shall submit for approval all required submittals as listed in the provided submittal log of the project specification, and/or paragraph 3.0 of this document, prior to the purchasing and installation of such items.
- 1.0.2 Prior to the commencement of any work any and all subcontractors shall submit to KBR their individual progress schedule for approval and for the incorporation into a Master Progress Schedule to be provided to the client for tracking purposes.
- 1.0.3 All contractors will provide KBR with a scope clarification letter that explicitly identifies the task included in their base and or alternate bids where applicable. All contractors will provide KBR with a list of lower tier subcontractors, material suppliers, and employees expected to perform work under their supervision during this project. All contractors will provide KBR with an itemized breakdown of labor and equipment rates to be used if change orders are to be processed and issued.
- 1.0.4 Permits are required on this project.
- 1.0.5 Safety plans shall consider all possible work activities, appropriate safety considerations, and all OSHA and KBR safety rules and regulations. Each contractor must have a current Safety Plan on file with KBR prior to commencing work.

## SCOPE OF WORK

DATE: 4/29/16  
RFP No: CS-04-16  
TITLE: PW gutters

- 1.0.6 Subcontractor shall provide a daily report to KBR at the beginning of the following business day. KBR will provide blank forms to subcontractor to be filled out if necessary.
- 1.0.7 **Daily clean-up is mandatory. Each trade is responsible for the clean up of associated debris.** Remove all debris from the building and place in either an approved on-site dumpster or to an approved landfill located off of the owner's property. No owner trash receptacles shall be used at any time during the performance of the requested work by the subcontractor. All hallways, stairwells, corridors and elevators will be cleaned daily where construction traffic is evident.
- 1.0.8 Subcontractor is responsible for the protection of Carol Stream facilities and services during demolition and construction. Any Carol Stream property, facilities or services damaged during demolition or construction activities it is the sole responsibility of the Subcontractor to restore these to like or better condition at no additional cost to Carol Stream or KBR.
- 1.0.9 Unforeseen Site Conditions encountered by the subcontractor are to be brought to the immediate attention of KBR Project Management Staff. Upon notification, an on site meeting with Carol Stream and KBR Staff will be held to evaluate the situation and determine the appropriate methods and costs associated to remedy the condition. The subcontractor will be allowed an opportunity to price the additional work if needed. It is the responsibility of each performing contractor to receive a Change Order Proposal Request, initiated either by KBR or at the request of the performing contractor, followed by a Change Order Proposal and an approved Change Order prior to commencing work. Failure to comply with this directive will result in the nullification of any Change Order Proposal or Change Order Request for additional work. Unauthorized additional work will not be compensated.
- 1.0.10 Security, safety and storage of all materials and equipment are the sole responsibility of the subcontractor. If an on-site storage container or area is approved, KBR and Carol Stream assume no responsibility for the protection or security of the container, storage area or the contents therein.
- 1.0.11 The subcontractor will coordinate access to the property through KBR, and the subcontractor shall not make any type of arrangements with Carol Stream personnel.
- 1.0.12 Arrangement for parking and/or parking permitting is the responsibility of the subcontractor. The subcontractor shall verify parking conditions of the project site prior to bid.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-04-16  
**TITLE:** PW gutters

### **Included but not limited to:**

#### **1.1 PW gutters: 07000**

- 1.1.1. Full time fall protection requirements are required when working on a leading edge unless a fall arrest rail system is used and within the OSHA guidelines.
- 1.1.2. Remove and discard 425 LF soffit, fascia, drip edge and 400 LF of box gutters and ten down spouts and recycle. We will have to cut and grind the old bolts/screw from the existing gutter as they are fastened into steel. We will have to peel back the existing roof membrane for the gutter installation.
- 1.1.3. Remove the existing soffit from one (1) gable and four (4) eaves.
- 1.1.4. Provide and install approximately 500 LF of 24-gauge Kynar steel soffit and fascia cover to four (4) eaves and one (1) gable end above lower flat roof where the new roof is to be located.
- 1.1.5. Provide and install as seamless as possible, Kynar steel 24-gauge DX 6" box gutters with built in flashing mounted to the roof to work with existing paneled metal roofs. Install hangers every two feet into new fascia, add splice plates and seal. We will have to drill into steel beams to mount the gutters.
- 1.1.6. Clean and prime existing EPDM roofing membrane at the eaves and flashing mounted to the roof.
- 1.1.7. Install 425 LF of membrane patch to seal the existing EPDM and gutter flashing for final water proof seal and strip/seam to the new flashing with 6" EPDM cover tape to ensure no water backs up.
- 1.1.8. Provide and install (approximately 200 LF) ten (10) 6" x 6" down spouts.
- 1.1.9. Removal all caulk seams with wire brush, clean, and seal gutters with Topps Polyprene rubber coating and mesh scrim sheet to four-teen (14) seams on adjacent building.

#### **2.0 DRAWINGS, SKETCHES, AND SPECIFICATIONS:**

- 2.1 Clarifications/Special Considerations: No lead or asbestos removal or encapsulation or environmental remediation or siding is included in this scope of work.
- 2.2 Salvageable/Repairable Materials for Reuse: As specified in the provided specification and drawings.
- 2.3 Submittal Requirements: As required in the provided project specification submittals log, paragraph 1.0.1 of this document, and paragraph 3.0 of this document.
- 2.4 Schedules: All applicable trades shall provide a complete and accurate Progress Schedule to KBR staff within five (5) business days upon receipt of a signed contract with KBR. Progress Schedule shall reflect actual work in place completion dates to include long lead time and delivery of specialized equipment and material.
- 2.5 Supervisory of Construction: All applicable trades shall provide the name and phone number (cell number) of the on-site superintendent responsible for all on-going work activities as well as a list of all persons scheduled to perform work on site.
- 2.6 Drawings and Sketches: As required by the provided specification in Division 1 General Requirements.

## SCOPE OF WORK

**DATE:** 4/29/16  
**RFP No:** CS-04-16  
**TITLE:** PW gutters

**2.7** Extra Stock of Material: N/A

### **3.0 SUBMITTALS:**

#### **3.1 Roofing Submittals – Including but not limited to:**

- 3.1.1 Color and cut sheets.
- 3.1.2 Safety Plan-MSDS
- 3.1.3 Schedule of Values
- 3.1.4 Progress schedule
- 3.1.5 Certified payroll submitted weekly
- 3.1.6 List of lower-tier subcontractors (if applicable)
- 3.1.7 List of material suppliers
- 3.1.8 Itemized breakdown of labor and equipment rates
- 3.1.9 Items listed in submittal log of project specification
- 3.1.10 Closeout documents – warranty letters

### **4.0 Project Documents:**

- 4.1 Project Specifications– None**
- 4.2 Architectural Documents – None**
- 4.3 Plumbing and Fire Protection Documents –None**
- 4.4 Mechanical Documents – None**
- 4.5 Electrical Documents – None**



**Final Estimate**

Greg Frer  
KBR

CP-001-12 - 2012 DuPage County, IL IPA JOC - Basic Contract Year -  
1/01/2012 to 12/31/2012  
PW Gutters - CS-04-16

**Estimator: Greg Frer**

**PW Gutters**

**Division Summary (MF04)**

01 - General Requirements	\$9,983.17	26 - Electrical	
02 - Existing Conditions		27 - Communications	
03 - Concrete		29 - Electronic Safety and Security	
04 - Masonry		31 - Earthwork	
05 - Metals	\$1,009.50	32 - Exterior Improvements	
06 - Wood, Plastics, and Composites		33 - Utilities	
07 - Thermal and Moisture Protection	\$29,646.84	34 - Transportation	
08 - Openings		35 - Waterway and Marine Transportation	
09 - Finishes	\$7.30	41 - Material Processing and Handling Equipment	
10 - Specialties		44 - Pollution Control Equipment	
11 - Equipment		46 - Water and Wastewater Equipment	
12 - Furnishings		48 - Electric Power Generation	
13 - Special Construction		Alternate	\$38,762.09
14 - Conveying Equipment		Trades	
21 - Fire Suppression		Assemblies	
22 - Plumbing		FMR	
23 - Heating, Ventilating, and Air-Conditioning (HVAC)		<b>MF04 Total (Without totalling components)</b>	<b>\$79,408.90</b>

**Totalling Components**

Subtotal	\$79,408.90	2012 DuPage County, IL IPA JOC Standard (20.8400%)	\$16,548.81
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**Material, Labor, and Equipment Totals (No Totalling Components)**

Material:	\$27,582.20
Labor:	\$42,360.45
Equipment:	\$9,466.25
Other:	\$0.00
Laborhours:	452.75
Green Line Items:	\$0.00

**Priced/Non-Priced**

Total Priced Items:	27	\$79,408.90	
Total Non-Priced Items:	0	\$0.00	0.00%
	27	\$79,408.90	

**Grand Total** **\$95,957.71**

**Final Estimate**

Estimator: Greg Frer

PW Gutters

Item	Description	UM	Quantity	Unit Cost	Total	Book	
<b>01 - General Requirements</b>							
1	01-21-53-50-1450-L Factors, cost adjustments, add to construction costs for particular job requirements, material handling and storage limitation, add, maximum Line item is for general loss time for elevated work for labor and/or material handling.	Costs	88,473.8900	7.0000%	\$6,193.17	RSM16eFAC L, B	P
2	01-54-33-40-0170-1 Hourly operating cost for general equipment rental, without operators, aerial lift, telescoping boom to 40' high, 500 lbs. capacity, diesel 240 hours for operating costs. 2 lifts for 3 weeks, 80 hours per week x 3 weeks = 240 hours.	Ea.	240.0000	\$13.50	\$3,240.00	RSM16eFAC E, B	P
3	01-54-36-50-1200 Mobilization, up to 25 mile haul distance, 50 miles round trip for mobilization or demobilization crew, small equipment, placed in rear of, or towed by pickup  Two lifts.	Ea.	4.0000	\$137.50	\$550.00	RSM16eFAC L, E, B	P
<b>01 - General Requirements Total</b>							<b>\$9,983.17</b>
<b>05 - Metals</b>							
4	05-05-21-10-0050 Cutting steel, hand burning, including preparation, torch cutting and grinding, excluding staging, steel to 1/4" thick Cut off old bolts/screws on existing.	L.F.	100.0000	\$1.32	\$132.00	RSM16eFAC M, L, E, B	P
5	05-05-21-15-1920 Drilling steel, drilling and layout for steel, up to 1/4" deep, no anchor, holes, 1/4"  Holes drilled into steel for hangers.	Ea.	225.0000	\$3.90	\$877.50	RSM16eFAC M, L, B	P
<b>05 - Metals Total</b>							<b>\$1,009.50</b>
<b>07 - Thermal and Moisture Protection</b>							
6	07-46-73-10-0100 Soffit options, baked enamel on steel, 16 or 18 gauge New soffit.	S.F.	1,000.0000	\$9.59	\$9,590.00	RSM16eFAC M, L, B	P
7	07-85-23-10-8400 Rubber sheet flashing and counterflashing, neoprene, cured, 1/8" thick Line item is after peeling back the existing roof and setting the gutters, the existing roof material will have to be reheated/sealed back from the existing material over the inside edge of the gutters.	S.F.	1,000.0000	\$7.22	\$7,220.00	RSM16eFAC M, L, B	P
8	07-71-19-30-0300 Fascia, steel, galvanized and enameled, stock, no furring, long panels New fascia board.	S.F.	500.0000	\$8.41	\$4,205.00	RSM16eFAC M, L, B	P
9	07-71-23-10-5500 Downspouts, steel, galvanized, round, corrugated, 6" diameter, 26 gauge Line item used and modified because gutters will be 6"x6". None in the book	L.F.	200.0000	\$7.86	\$1,572.00	RSM16eFAC M, L, B	P
10	07-71-23-20-0500 Downspout elbows, aluminum, embossed, corrugated, 4" diameter, .025" thick 90's and offsets	Ea.	30.0000	\$10.38	\$311.40	RSM16eFAC M, L, B	P
11	07-71-23-30-5200 Gutters, accessories, end cap, half round, galvanized steel, 6" Ends for gutter.	Ea.	8.0000	\$3.53	\$28.24	RSM16eFAC M, L, B	P

**Final Estimate**

Estimator: Greg Frer

PW Gutters

**07 - Thermal and Moisture Protection**

Item	Description	UM	Quantity	Unit Cost	Total	Book	
12 07-71-23-30-5460	Gutters, accessories, vinyl mitres and outlets 90's, offsets, and down spouts, cut for mitres and holes for spouts.	Ea.	14.0000	\$16.80	\$235.20	RSM16eFAC M, L, B	P
13 07-71-23-30-5470	Gutters, accessories, sealant Line item is for mitres and downspouts.	L.F.	40.0000	\$0.50	\$20.00	RSM16eFAC M, L, B	P
14 07-71-43-10-0300	Drip edge, rake edge, ice belts, aluminum, .016" thick, ice belt, 28" wide, mill Drip edge.	L.F.	500.0000	\$11.53	\$5,765.00	RSM16eFAC M, L, B	P
15 07-92-13-20-3500	Caulking and sealant options, polyurethane, 1 or 2 component, bulk, in place, 1/4" x 1/4" Caulking, new work and work on existing leaking gutters.	L.F.	500.0000	\$1.40	\$700.00	RSM16eFAC M, L, B	P
<b>07 - Thermal and Moisture Protection Total</b>							<b>\$29,646.84</b>

**09 - Finishes**

16 09-91-03-40-0490	Interior surface preparation, windows, per side, excluding trim, wire brush, metal, metal, 3 to 6 lite Line item is to remove old seal on existing gutters where leaking.	S.F.	10.0000	\$0.73	\$7.30	RSM16eFAC L, B	P
<b>09 - Finishes Total</b>							<b>\$7.30</b>

**Alternate**

17 01-54-33-40-0170-3	Rent per week for general equipment rental, without operators, aerial lift, telescoping boom to 40' high, 500 lbs. capacity, diesel Line item is for two lift rentals for three weeks. Lift will be in use full time. Added labor because line item is rental only. Sheet metal workers per the book are 54.70 per hour x 240 hours = 13,128 / 6 = 2,188.	Ea.	6.0000	\$3,193.00	\$19,158.00	CUSTOM L, E, B	P
18 07-46-73-10-0100	Soffit options, baked enamel on steel, 16 or 18 gauge Line item if for labor to remove existing, material has been removed.	S.F.	1,000.0000	\$3.69	\$3,690.00	CUSTOM L, B	P
19 07-53-23-20-3800	Ethylene-Propylene-Diene-Monomer Roofing (EPDM), 45 mils, 0.28 psf, fully adhered with adhesive Line item is to peel back existing roof for new installation, SQ is 100SF. Material removed, labor only.	Sq.	5.0000	\$65.95	\$329.75	CUSTOM L, E, B	P
20 07-71-19-30-0300	Fascia, steel, galvanized and enameled, stock, no furring, long panels Line item if for labor to remove existing, material has been removed.	S.F.	500.0000	\$3.18	\$1,580.00	CUSTOM L, B	P
21 07-71-23-10-5500	Downspouts, steel, galvanized, round, corrugated, 6" diameter, 26 gauge Line item if for labor to remove existing, material has been removed.	L.F.	200.0000	\$4.36	\$872.00	CUSTOM L, B	P
22 07-71-23-20-0500	Downspout elbows, aluminum, embossed, corrugated, 4" diameter, .025" thick Line item if for labor to remove existing, material has been removed.	Ea.	30.0000	\$4.58	\$137.40	CUSTOM L, B	P
23 07-71-23-30-2800	Gutters, steel, galvanized, half round or box, 26 gauge, stock, 6" wide	L.F.	400.0000	\$23.66	\$9,464.00	CUSTOM M, L, B	P

**Final Estimate**

**Estimator: Greg Frer**

**PW Gutters**

Alternate

Item	Description	UM	Quantity	Unit Cost	Total	Book
New gutters, there is no Kylan steel DX 6", 24 gauge box gutter in the book, these are custom to fit the building. Line item material column was modified for actual.						
24	07-71-23-30-2800 Gutters, steel, galvanized, half round or box, 26 gauge, stock, 6" wide	L.F.	400.0000	\$3.66	\$1,464.00	CUSTOM L, B P
Line item if for labor to remove existing, material has been removed.						
25	07-71-23-30-5200 Gutters, accessories, end cap, half round, galvanized steel, 6"	Ea.	8.0000	\$3.53	\$28.24	CUSTOM M, L, B P
Line item if for labor to remove existing, material has been removed.						
26	07-71-23-30-5460 Gutters, accessories, vinyl mitres and outlets	Ea.	14.0000	\$7.05	\$98.70	CUSTOM L, B P
Line item if for labor to remove existing, material has been removed.						
27	07-71-43-10-0300 Drip edge, rake edge, ice belts, aluminum, .016" thick, ice belt, 28" wide, mill	L.F.	500.0000	\$3.88	\$1,940.00	CUSTOM L, B P
Line item if for labor to remove existing, material has been removed.						
<b>Alternate Total</b>						<b>\$38,762.00</b>

**Estimate Grand Total 95,957.71**

*Village of Carol Stream*  
INTER-DEPARTMENTAL MEMO

**TO:** Mayor & Trustees

**FROM:** Robert Mellor, Assistant Village Manager

**DATE:** July 15, 2016

**RE:** **Authorizing Execution of a Contract with MTI Construction Services for Construction Management Services at Risk (CMAR) in Conjunction with the Renovation/Expansion of the Existing Municipal Center located at 500 N. Gary Avenue, Carol Stream, IL**

As part of the 2016 Capital Improvement Program, funding was provided to begin the process to design the renovation/expansion of the existing Gregory J. Bielawski Municipal Center. Williams Architects was hired to provide basic architectural services for renovations to the existing Village Hall/Police Station facility consisting of Schematic Design, Design Development, Interior Design, Design of Interior Signage, Measurement of existing floor plan layout, Construction Documents, Bidding, Construction Administration, Furniture Design & Selection, Landscape Architecture, Design services for low voltage systems (design through construction administration), interior furniture inventory of the condition of the existing furniture and Civil Engineering.

In addition to architectural services for this project a Construction Manager/Cost Consultant will be used to assist the Village obtaining accurate cost estimates for construction, refine the scope of work, perform the actual bidding services, hire subcontractors, ensure safety of the job site, maintain quality control of products and services, identify cost savings through value engineering, prepare payout requests, secure lien waivers and assist us with relocation services during the approximately 14 month construction project. The delivery method used on this project will be Construction Manager at Risk (CMAR) with a Guaranteed Maximum Price for construction (GMP). Both the architectural and CMAR services are included in the estimated project budget of \$13,100,000 - \$15,650,000. The CMAR will hold all the contracts on this project, making them responsible for all paperwork, payouts, liens, and warranties. This gives the Village a single point of contact for construction and any issues that may arise, a single point of payment and most importantly a Guaranteed Maximum Price.

Construction Manager at Risk (CMAR) services are typically used for larger and more complex projects. This method of managing construction projects requires a commitment by the Construction Manager (CM) to deliver the project within a Guaranteed Maximum Price (GMP) which is based on the construction documents and specifications at the time the GMP is developed plus any reasonably included items or tasks. The CMAR provides professional

services and acts as a consultant to the Owner/Village in the design development and construction phases. In addition to acting in the Owner's interest, the CMAR manages and controls construction costs to not exceed the GMP because contractually any costs exceeding the GMP that are not change orders are the financial liability of the CMAR. Included in this GMP is a contingency line item to take care of bid overages, reasonably inferred items and other project related items that may arise during construction. By giving the Owner the GMP prior to bids, the CMAR assumes the risk of bids coming in higher as he is contractually bound to deliver the project per the plans and specifications and any additional allowances as defined in his GMP.

The benefits to the Village of this delivery method include:

- A higher level of cost control throughout the project. A successful CMAR project involves a team approach between the Owner, architect and the CMAR. During the design process, the CMAR will provide cost estimates at contractually established points. If these cost estimates are in line with the established budget, the architect then moves on to the next phase of design. If not, the CMAR, Owner and Architect assess the cost estimate and make design changes to bring the design back into budget alignment. This process ensures budget success.
- CMAR services are professional services like architectural, engineering, surveying, etc. The CMAR's main purpose is not to construct the project, but to manage the construction of the project the management of which adds value to the project. The CMAR will act as the Village's advocate and manages the project with the Village's best interest in mind at all times and is responsible for establishing and maintaining all quality control standards
- The CMAR takes burden off the Village in managing, scheduling and coordinating the project, prepares the overall project schedule, provides periodic detailed updates and develops a phasing and sequencing plan.
- The Village's risk is limited by the CMAR process providing the construction documents are complete and proper allowances and contingencies are built into the GMP.
- Constructability and value to the Village are provided by the Value Engineering expertise afforded by the CMAR. In the design phase, properly applied value engineering considers alternative design solutions to optimize the expected costs/benefits of the project at completion. Value engineering examines various ideas on ways of maintaining or enhancing project objectives while reducing costs over the life of the equipment or facility. An example of this would be the widespread use of LED lighting fixtures, room sensors and intelligent HVAC systems which are more energy efficient, require less maintenance and have greater equipment longevity.
- The CMAR provides constructability reviews and cost analyses, prepares bid packages and conceptual and detailed cost estimates.
- The CMAR guarantees the construction cost and serves as General Contractor.
- A CM allows the Village to stay on budget and on schedule for the project by holding all the contracts, managing all paperwork, handling all bidding and maintaining a guaranteed maximum price.

In order to choose a qualified CMAR, Village Staff with the help of Williams Architects, issued Requests for Qualifications/Request for Proposals (RFQ/RFP) for CMAR services on June 8, 2016 with submittals due back on July 6, 2016. We also invited prospective CMAR to tour the Municipal Center to give them a better idea of the proposed scope of the project. Williams Architects presented preliminary designs to the prospective CMAR prior to the tour of the building on June 29, 2016. Eight CMAR firms responded to the RFQ/RFP and attended the walk-through.

The CMAR selection team consisted of representatives from the Village Manager's Office, Financial Management, Engineering Services, Employee Relations and Municipal Buildings and Grounds. Five staff members evaluated the eight proposals and the top five CMAR firms were invited to be interviewed and make their presentations. MTI Construction, Harbour Contractors, W.B Olson, Frederick Quinn Corporation and Camosy Construction were interviewed on July 12 – 13, 2016 by the CMAR selection team. The selection team then chose the top 3 CMAR firms for further consideration based on their presentations, personal interviews, successful completion of similar types of municipal renovation/remodeling work and other criteria contained in the RFQ. Below are the tabular summaries of the top 3 CMAR firms:

	<b>MTI</b>	<b>Camosy</b>	<b>Frederick Quinn Corp.</b>
<b>Address</b>	Lombard, IL	Zion, IL	Addison, IL
<b>Years in Business<sup>1</sup></b>	19 years	48 years	35 years
<b>Reference Checks</b>	Yes- Positive	Yes- Positive	Yes- Positive
<b>Work as CMAR – Last 5 years</b>	75%	65%	53%
<b>Insurance Experience<sup>2</sup></b>	.93	.71	.92
<b>Municipal Projects</b>	<ul style="list-style-type: none"> <li>• Elk Grove VH &amp; PD</li> <li>• Vernon Hills PD</li> <li>• Hoffman Estates PD</li> <li>• St. Charles VH &amp; PD</li> <li>• Libertyville PD</li> <li>• Niles PD</li> </ul>	<ul style="list-style-type: none"> <li>• Bensenville PD</li> <li>• Glendale Hts. PD</li> <li>• Palatine VH &amp; PD</li> <li>• C.S. Park District</li> <li>• C.S. Library</li> </ul>	<ul style="list-style-type: none"> <li>• Bedford Park VH &amp; PD</li> <li>• Corpus Christie &amp; Wheaton Bible Churches</li> <li>• Kane County Courthouse</li> </ul>
<b>Proposed Schedule:</b>			
<b>Owner Move-Out</b>	March 30, 2017	Spring 2017	March 31, 2017
<b>Construction</b>	June 2017 – July 2018	June 2017 – Aug. 2018	June 2017 – May 2018
<b>Owner Move-In</b>	August 17, 2018	September 2018	June 2018
<b>Fee Proposal based on \$15,650,000 Assumed Construction Value</b>	\$1,003,199	\$1,007,267	\$1,020,350
<b>Misc. Provisions</b>	<ul style="list-style-type: none"> <li>• 2 Yr. Labor &amp; Materials Warranty</li> <li>• All unspent contingency funds returned to owner</li> </ul>	<ul style="list-style-type: none"> <li>• All savings and unspent contingency funds returned to owner</li> </ul>	<ul style="list-style-type: none"> <li>• All unspent contingency funds returned to owner</li> </ul>

<sup>1</sup> Years in business under current incorporation (MTI has been in business over 104 years including 31 years serving public agencies)

<sup>2</sup> Lower Insurance Experience rating = better claims history

The top choice after evaluation of the qualifications, fee proposals and interviews was MTI Construction Services. The project team was most comfortable and impressed with MTI on an interpersonal level, on a qualification level and on a budget level. MTI Construction Services has a wealth of experience working on complex buildings within the municipal sector including remodeling projects of combined municipal/police facilities, excavation adjacent to existing structures and temporary relocation of building occupants during complete renovation.

**KEY POINTS:**

- The Village will have one contract on this project with MTI Construction for Construction Management at Risk services. The CMAR will be responsible for coordinating and directing work of all subcontractors under their bid authority.
- MTI as the CMAR will be responsible for all sub-contracts which will be competitively bid with a minimum of three bids for each trade wherever possible. The Village has the right to reject any bid and to accept the one they feel is in their best interest.
- All State requirements regarding wage rates, employment and insurance are provided.
- Under the terms of the agreement with MTI all future savings realized are paid back to the Village 100%.
- It is estimated that once construction starts in June 2017 all work will be completed in approximately 14 months (or by August, 2018).

**ACTION REQUIRED:** Motion to authorize the Village Manager to execute a contract with MTI Construction Services for Construction Management Services at Risk in conjunction with the renovation/expansion of the existing Municipal Center/Police Station in substantial conformity with the attached documents, and with all final changes subject to the approval of the Village Manager and Village Attorney.

**ATTACHMENTS:**

- Municipal Center Construction Manager Contract with MTI Construction Services - AIA® Document A133™ – 2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- AIA® Document A201™ – 2007 General Conditions of the Contract for Construction
- MTI Fee Proposal



**AIA**<sup>®</sup>

# Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Village of Carol Stream - Village Hall and Police Addition and Remodeling

**THE OWNER:**

*(Name, legal status and address)*

Village of Carol Stream  
500 North Gary Ave.  
Carol Stream, IL 60188

**THE ARCHITECT:**

*(Name, legal status and address)*

Williams Architects  
500 Park Boulevard, Suite 800  
Itasca, IL 60143

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

**ADDITIONS AND DELETIONS:**

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

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES
- 16 EQUAL OPPORTUNITY
- 17 SEXUAL HARRASSMENT POLICY
- 18 PREVAILING RATE OF WAGE

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User Notes:

(1400204889)

## INDEX

(Topics and numbers in bold are section headings.)

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### Access to Work

3.16, 6.2.1, 12.1

### Accident Prevention

10

### Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2

### Addenda

1.1.1, 3.11.1

### Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.5

### Additional Insured

11.1.4

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.5

### Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

### Advertisement or Invitation to Bid

1.1.1

### Aesthetic Effect

4.2.13

### Allowances

3.8, 7.3.8

### All-risk Insurance

11.3.1, 11.3.1.1

### Applications for Payment

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

### Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1

### Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, 15.4

## ARCHITECT

4

### Architect, Definition of

4.1.1

### Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

### Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

### Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

### Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

### Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

### Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

### Architect's Copyright

1.1.7, 1.5

### Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

### Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

### Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

### Architect's Interpretations

4.2.11, 4.2.12

### Architect's Project Representative

4.2.10

### Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

### Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

### Architect's Representations

9.4.2, 9.5.1, 9.10.1

### Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

### Asbestos

10.3.1

### Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

### Award of Separate Contracts

6.1.1, 6.1.2

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

5.2

### Basic Definitions

1.1

### Bidding Requirements

1.1.1, 5.2.1, 11.4.1

### Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

### Boiler and Machinery Insurance

11.3.2

### Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, 11.4

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(1400204889)

**Building Permit**

3.7.1

**Capitalization**

1.3

**Certificate of Substantial Completion**

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

**Certificates of Inspection, Testing or Approval**

13.5.4

**Certificates of Insurance**

9.10.2, 11.1.3

**Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

**Change Orders, Definition of**

7.2.1

**CHANGES IN THE WORK**

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

**Claims, Definition of**

15.1.1

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

**Claims and Timely Assertion of Claims**

15.4.1

**Claims for Additional Cost**

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

**Claims for Additional Time**

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5

**Concealed or Unknown Conditions, Claims for**

3.7.4

**Claims for Damages**

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

**Claims Subject to Arbitration**

15.3.1, 15.4.1

**Cleaning Up**

3.15, 6.3

**Commencement of the Work, Conditions Relating to**

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

**Commencement of the Work, Definition of**

8.1.2

**Communications Facilitating Contract Administration**

3.9.1, 4.2.4

**Completion, Conditions Relating to**

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

**COMPLETION, PAYMENTS AND**

9

**Completion, Substantial**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

**Compliance with Laws**

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

**Concealed or Unknown Conditions**

3.7.4, 4.2.8, 8.3.1, 10.3

**Conditions of the Contract**

1.1.1, 6.1.1, 6.1.4

**Consent, Written**

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

**Consolidation or Joinder**

15.4.4

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

**Construction Change Directive, Definition of**

7.3.1

**Construction Change Directives**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

**Construction Schedules, Contractor's**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

**Contingent Assignment of Subcontracts**

5.4, 14.2.2.2

**Continuing Contract Performance**

15.1.3

**Contract, Definition of**

1.1.2

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 11.3.9, 14

**Contract Administration**

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution, Conditions Relating to**

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

**Contract Documents, Copies Furnished and Use of**

1.5.2, 2.2.5, 5.3

**Contract Documents, Definition of**

1.1.1

**Contract Sum**

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

**Contract Sum, Definition of**

9.1

**Contract Time**

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

**Contract Time, Definition of**

8.1.1

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(1400204889)

## CONTRACTOR

3

### Contractor, Definition of

3.1, 6.1.2

### Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

### Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

### Contractor's Liability Insurance

11.1

### Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

### Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

### Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

### Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

### Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

### Contractor's Review of Contract Documents

3.2

### Contractor's Right to Stop the Work

9.7

### Contractor's Right to Terminate the Contract

14.1, 15.1.6

### Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

### Contractor's Superintendent

3.9, 10.2.6

### Contractor's Supervision and Construction Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

### Contractual Liability Insurance

11.1.1.8, 11.2

### Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

### Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

### Copyrights

1.5, 3.17

### Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

### Correlation and Intent of the Contract Documents

1.2

### Cost, Definition of

7.3.7

## Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

## Cutting and Patching

3.14, 6.2.5

## Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

## Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

## Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

## Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

## Date of Commencement of the Work, Definition of 8.1.2

Date of Substantial Completion, Definition of 8.1.3

## Day, Definition of

8.1.4

## Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

## Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

## Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

## Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

## Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

## Disputes

6.3, 7.3.9, 15.1, 15.2

## Documents and Samples at the Site

3.11

## Drawings, Definition of

1.1.5

## Drawings and Specifications, Use and Ownership of

3.11

## Effective Date of Insurance

8.2.2, 11.1.2

## Emergencies

10.4, 14.1.1.2, 15.1.4

## Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

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**Equipment, Labor, Materials or**

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

**Execution and Progress of the Work**

1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

**Extensions of Time**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3, 15.1.5, 15.2.5

**Failure of Payment**

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

**Faulty Work**

(See Defective or Nonconforming Work)

**Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3.1, 14.2.4, 14.4.3

**Financial Arrangements, Owner's**

2.2.1, 13.2.2, 14.1.1.4

**Fire and Extended Coverage Insurance**

11.3.1.1

**GENERAL PROVISIONS**

1

**Governing Law**

13.1

**Guarantees (See Warranty)**

**Hazardous Materials**

10.2.4, 10.3

**Identification of Subcontractors and Suppliers**

5.2.1

**Indemnification**

3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

**Information and Services Required of the Owner**

2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Initial Decision**

15.2

**Initial Decision Maker, Definition of**

1.1.8

**Initial Decision Maker, Decisions**

14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

**Injury or Damage to Person or Property**

10.2.8, 10.4.1

**Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

**Instructions to Bidders**

1.1.1

**Instructions to the Contractor**

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

**Instruments of Service, Definition of**

1.1.7

**Insurance**

3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

**Insurance, Boiler and Machinery**

11.3.2

**Insurance, Contractor's Liability**

11.1

**Insurance, Effective Date of**

8.2.2, 11.1.2

**Insurance, Loss of Use**

11.3.3

**Insurance, Owner's Liability**

11.2

**Insurance, Property**

10.2.5, 11.3

**Insurance, Stored Materials**

9.3.2

**INSURANCE AND BONDS**

11

**Insurance Companies, Consent to Partial**

**Occupancy**

9.9.1

**Intent of the Contract Documents**

1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

**Interest**

13.6

**Interpretation**

1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

**Interpretations, Written**

4.2.11, 4.2.12, 15.1.4

**Judgment on Final Award**

15.4.2

**Labor and Materials, Equipment**

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

**Labor Disputes**

8.3.1

**Laws and Regulations**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2, 13.6.1, 14, 15.2.8, 15.4

**Liens**

2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

**Limitations, Statutes of**

12.2.5, 13.7, 15.4.1.1

**Limitations of Liability**

2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

**Limitations of Time**

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

Init.

**Loss of Use Insurance**

11.3.3

**Material Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

**Materials, Hazardous**

10.2.4, 10.3

**Materials, Labor, Equipment and**

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

**Means, Methods, Techniques, Sequences and Procedures of Construction**

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

**Mechanic's Lien**

2.1.2, 15.2.8

**Mediation**

8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1

**Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.8, 7.1, 7.4

**MISCELLANEOUS PROVISIONS**

13

**Modifications, Definition of**

1.1.1

**Modifications to the Contract**

1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2, 11.3.1

**Mutual Responsibility**

6.2

**Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, 12.3

**Nonconforming Work, Rejection and Correction of**

2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2.1

**Notice**

2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7, 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2, 14.1, 14.2, 15.2.8, 15.4.1

**Notice, Written**

2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, 13.3, 14, 15.2.8, 15.4.1

**Notice of Claims**

3.7.4, 10.2.8, 15.1.2, 15.4

**Notice of Testing and Inspections**

13.5.1, 13.5.2

**Observations, Contractor's**

3.2, 3.7.4

**Occupancy**

2.2.2, 9.6.6, 9.8, 11.3.1.5

**Orders, Written**

1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2, 14.3.1

**OWNER**

2

**Owner, Definition of**

2.1.1

**Owner, Information and Services Required of the**

2.1.2, 2.2, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

**Owner's Authority**

1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

**Owner's Financial Capability**

2.2.1, 13.2.2, 14.1.1.4

**Owner's Liability Insurance**

11.2

**Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

2.4, 14.2.2

**Owner's Right to Clean Up**

6.3

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

6.1

**Owner's Right to Stop the Work**

2.3

**Owner's Right to Suspend the Work**

14.3

**Owner's Right to Terminate the Contract**

14.2

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, 3.11.1, 3.17, 4.2.12, 5.3.1

**Partial Occupancy or Use**

9.6.6, 9.9, 11.3.1.5

**Patching, Cutting and**

3.14, 6.2.5

**Patents**

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, 9.3, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

**Payment, Final**

4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1, 13.7, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.7.4, 9.6.7, 9.10.3, 11.4

**Payments, Progress**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

## **PAYMENTS AND COMPLETION**

9

### **Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

### **PCB**

10.3.1

### **Performance Bond and Payment Bond**

7.3.7.4, 9.6.7, 9.10.3, 11.4

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

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION**

### **OF**

10

### **Polychlorinated Biphenyl**

10.3.1

### **Product Data, Definition of**

3.12.2

### **Product Data and Samples, Shop Drawings**

3.11, 3.12, 4.2.7

### **Progress and Completion**

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

### **Progress Payments**

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

### **Project, Definition of**

1.1.4

### **Project Representatives**

4.2.10

### **Property Insurance**

10.2.5, 11.3

## **PROTECTION OF PERSONS AND PROPERTY**

10

### **Regulations and Laws**

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

### **Rejection of Work**

3.5, 4.2.6, 12.2.1

### **Releases and Waivers of Liens**

9.10.2

### **Representations**

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

### **Representatives**

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

### **Responsibility for Those Performing the Work**

3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

### **Retainage**

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

### **Review of Contract Documents and Field**

#### **Conditions by Contractor**

3.2, 3.12.7, 6.1.3

### **Review of Contractor's Submittals by Owner and Architect**

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

### **Review of Shop Drawings, Product Data and Samples by Contractor**

3.12

### **Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

### **Royalties, Patents and Copyrights**

3.17

### **Rules and Notices for Arbitration**

15.4.1

### **Safety of Persons and Property**

10.2, 10.4

### **Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

### **Samples, Definition of**

3.12.3

### **Samples, Shop Drawings, Product Data and**

3.11, 3.12, 4.2.7

### **Samples at the Site, Documents and**

3.11

### **Schedule of Values**

9.2, 9.3.1

### **Schedules, Construction**

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

### **Separate Contracts and Contractors**

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

### **Shop Drawings, Definition of**

3.12.1

### **Shop Drawings, Product Data and Samples**

3.11, 3.12, 4.2.7

### **Site, Use of**

3.13, 6.1.1, 6.2.1

### **Site Inspections**

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

### **Site Visits, Architect's**

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

### **Special Inspections and Testing**

4.2.6, 12.2.1, 13.5

### **Specifications, Definition of**

1.1.6

### **Specifications**

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

### **Statute of Limitations**

13.7, 15.4.1.1

### **Stopping the Work**

2.3, 9.7, 10.3, 14.1

### **Stored Materials**

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

### **Subcontractor, Definition of**

5.1.1

## **SUBCONTRACTORS**

5

### **Subcontractors, Work by**

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Init.

**Subcontractual Relations**  
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

**Submittals**  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

**Submittal Schedule**  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, 11.3.7

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

**Substantial Completion, Definition of**  
9.8.1

**Substitution of Subcontractors**  
5.2.3, 5.2.4

**Substitution of Architect**  
4.1.3

**Substitutions of Materials**  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of**  
5.1.2

**Subsurface Conditions**  
3.7.4

**Successors and Assigns**  
13.2

**Superintendent**  
3.9, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

**Surety**  
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7  
Surety, Consent of  
9.10.2, 9.10.3

**Surveys**  
2.2.3

**Suspension by the Owner for Convenience**  
14.3

**Suspension of the Work**  
5.4.2, 14.3

**Suspension or Termination of the Contract**  
5.4.1.1, 14

**Taxes**  
3.6, 3.8.2.1, 7.3.7.4

**Termination by the Contractor**  
14.1, 15.1.6

**Termination by the Owner for Cause**  
5.4.1.1, 14.2, 15.1.6

**Termination by the Owner for Convenience**  
14.4

**Termination of the Architect**  
4.1.3

**Termination of the Contractor**  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**

14

**Tests and Inspections**  
3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

**TIME**  
8

**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

**Time Limits**  
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

**Time Limits on Claims**  
3.7.4, 10.2.8, 13.7, 15.1.2

**Title to Work**  
9.3.2, 9.3.3

**Transmission of Data in Digital Form**  
1.6

**UNCOVERING AND CORRECTION OF WORK**  
12

**Uncovering of Work**  
12.1

**Unforeseen Conditions, Concealed or Unknown**  
3.7.4, 8.3.1, 10.3

**Unit Prices**  
7.3.3.2, 7.3.4

**Use of Documents**  
1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

**Use of Site**  
3.13, 6.1.1, 6.2.1

**Values, Schedule of**  
9.2, 9.3.1

**Waiver of Claims by the Architect**  
13.4.2

**Waiver of Claims by the Contractor**  
9.10.5, 13.4.2, 15.1.6

**Waiver of Claims by the Owner**  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

**Waiver of Consequential Damages**  
14.2.4, 15.1.6

**Waiver of Liens**  
9.10.2, 9.10.4

**Waivers of Subrogation**  
6.1.1, 11.3.7

**Warranty**  
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

**Weather Delays**  
15.1.5.2

**Work, Definition of**  
1.1.3

Init.

**Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

**Written Interpretations**

4.2.11, 4.2.12

**Written Notice**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, 13.3, 14, 15.4.1

**Written Orders**

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

Init.

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Contract to render initial decisions on Claims in accordance with Section 15.2.

#### §1.1.9 PRODUCT

The term "product" as used in the Contract Documents includes materials, systems and equipment.

#### §1.1.10 PROVIDE

Where the word "provide" appears, it shall be taken and interpreted to mean "The Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and complete the construction of the Project.

§1.1.11 The term "Site" refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§1.1.12 The term "Punch List" means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.1.13 When the term Construction Manager is used in the Contract Documents, it shall mean the Contractor and the term Contractor shall mean the Construction Manager.

#### § 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. Large scale details on the Drawings shall take precedent over measurements. §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.

*(Paragraph deleted)*

§ 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.

§ 1.2.4 Should discrepancies appear among the Contract Documents and existing conditions, the Contractor shall request an interpretation from the Architect before bidding. If the Contractor fails to make such a request, it is presumed that both provisions were included in the Bid and the Architect shall determine which of the conflicting requirements will govern. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

#### § 1.3 CAPITALIZATION

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

#### § 1.4 INTERPRETATION

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

§ 1.4.1 In the event of conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Contract
- .2 The Contract
- .3 General Conditions of Contract as modified.

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In the event of a conflict between Drawings and Specifications, the more stringent, higher quality requirements shall be included. Details in drawings control over large-scale drawings.

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

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's or Architect's reserved rights.

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

#### § 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.

*(Paragraph deleted)*

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER § 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

*(Paragraph deleted)*

§ 2.2.2 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.

§ 2.2.3 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.

*(Paragraphs deleted)*

#### § 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

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Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.4 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 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, 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 compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 GENERAL**

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

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

**§ 3.1.3** The Contractor shall not be relieved of 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** By executing the Contract, the Contractor represents that the Contractor has reviewed and understands the Contract Documents, has visited the Site and is familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

**§ 3.2.2** The Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner before commencing Work at the Site and at frequent intervals during its progress. The Contractor shall promptly report to the Owner any nonconformity discovered or made known to the Contractor.

**§ 3.2.3** The Contractor must take field measurements and verify Site conditions, and must carefully compare such field measurements and Site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or doing any Work at the Site. The Contractor shall promptly report to the Owner any nonconformity discovered or made known to the Contractor.

**§ 3.2.4** The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

**§ 3.2.5** If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the

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Owner or its designees acting in the capacity of building code inspectors, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.6 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.7 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.8 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, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Section 3.2, 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 Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Contractor determines that such means, methods, techniques, sequences and procedures may not be safe, the Contractor shall give immediate written notice to the Owner and the Architect and shall not proceed with that portion of the Work without written instruction by the Owner. The Contractor is responsible for completion of the Work in full compliance with all with applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.

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

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

### § 3.4 LABOR AND MATERIALS

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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§ 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. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

### § 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, and that the Work will be free from defects or faults, and in conformance to 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. Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. Liability or refusal of the Subcontractor or supplier responsible for the defective Work to 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. The Contractor's warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's warranty.

§ 3.5.2 The Contractor shall furnish maintenance and 24-hour callback service for the equipment provided by it for a period of three (3) months after completion and acceptance of the Work. The service shall include regular examinations of the installation by competent and trained employees of the Contractor, and shall include all necessary adjustments, greasing, oiling, cleaning, supplies and parts to keep the equipment in proper operation except such parts made necessary by misuse, accidents, or negligence not caused by the Contractor or any of its subcontractors.

### § 3.6 TAXES

§ 3.6.1 The Owner enjoys tax exempt status as an Illinois municipality. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

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

*(Paragraph deleted)*

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, rules and regulations, or lawful orders of public authorities, or if the Contractor should have reasonably recognized, within construction industry standards, that such Work was performed contrary to applicable laws, statutes, ordinances, rules and regulations or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

*(Paragraph deleted)*

### § 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.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Contractor, and

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communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address, cell phone number and pager number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

§ 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.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within twenty-one (21) days of the execution of the Contract, shall prepare and submit for the Owner's and Architect's approval, a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, 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. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

§ 3.10.2 The Contractor shall prepare a submittal schedule, within twenty-one (21) days after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

### § 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, Construction Schedule. Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§3.11.1 Plans and sections of all concealed work, particularly concealed piping and conduit and deviations from conditions shown on the Contract Documents, shall be shown and dimensioned on the "As Built" drawings. Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§3.11.2 The Contractor and his subcontractors shall maintain 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 reproducible transparencies of the Contract Documents

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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.

§3.11.3 The Contractor shall cause the Plumbing, Mechanical, and Electrical, subcontractors to provide the Contractor with the three (3) copies of all operating manuals at the time of delivery of each major piece of equipment.

### § 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 Owner and 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. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 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, after consultation with the Owner, has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or

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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 specifically advise the Architect in writing, or on resubmitted Shop Drawings, Product Data Samples or similar submittals, of any revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, no approval of such resubmittal shall be given.

§ 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 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.

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

- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer / fabricator refuses to certify or guarantee performance of specified product as required.
- .5 When it is clearly seen in the judgment of the Architect 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 accomplished by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of material or equipment for which it is to be substituted, drawings, costs, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

### § 3.13 USE OF SITE

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

### § 3.14 CUTTING AND PATCHING

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

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

### § 3.15 CLEANING UP

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

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

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor 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 waive all right of contribution and indemnify, hold harmless and defend the Owner and Architect and their respective officers, agents, employees and consultants from and against all claims, damages, losses and expenses of whatever type and nature, and including but not limited to attorneys' fees and economic damages, arising out of or resulting from performance of the Work or a failure to fulfill a specific responsibility under this Agreement, but only to the extent caused in whole or in part by the negligent, intentional or reckless acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Agreement.

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

§ 3.18.3 Claims, damages, losses or expenses, as these words are used in this Contract, shall be construed to include, but not be limited to, (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items or equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claims or in bringing an action to enforce the provision of this indemnity or any other

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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** Only to the extent prohibited by the Illinois Contractor Contract indemnification for negligence per 740 ILCS 35 et seq., the indemnification obligations of contractor under this Contract shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees arising out of their own negligence.

### **§3.19 WORKS BY TRADE UNIONS**

**§3.19.1** If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect 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 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.

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

**§ 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, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

**§ 4.2.3** On the basis of the Site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and 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.

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#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and Contractor shall endeavor to include the Architect in communications about matters arising out of or relating to the aspects of the Contract which involve the Architect. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 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. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The 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, will 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 and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents and approval of the Owner.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations within 15 days after written request is made.

§ 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.

§ 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, if reasonably inferable from the Contract documents as being necessary to produce the intended results.

§ 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.

§ 4.3 Intentionally Deleted.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has 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 objection.

§ 5.2.2 All subcontracts shall be in writing, and shall be assignable by the General Contractor to the Owner. The Contractor shall not contract with a proposed person or entity to whom the Owner has made and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no objection.

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

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### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, 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.

### § 5.4 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 Intentionally Deleted.

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

*(Paragraph deleted)*

## § 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 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, and Contractor ; a Construction Change Directive requires agreement by the Owner 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 in consultation with the Owner.

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

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared 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.

§ 7.2.2 The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract

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Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the Work involved in the change proposal in accordance with this Section 7.2.2 without accepting the change proposal in its entirety.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

### § 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.

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

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

#### § 7.4 MINOR CHANGES IN THE WORK

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

#### §7.5 AGREED OVERHEAD AND PROFIT RATES

§7.5.1 For any adjustments to the Contract Sum based on other than the unit prices method, the Contractor agrees to charge and accept payment for his overhead and profit at the following percentages of the cost attributable to the change in the Work;

- .1 Ten percent (10%) for Work by the Contractor not involving Subcontractors;
- .2 Five percent (5%) for Work by Subcontractors.
- .3 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;

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- .4 For additional Work ordered as described above which will be executed by Subcontractors for the Contractor, it is agreed Subcontractors will be permitted to charge ten percent (10%) for Work not involving subcontractors and five percent (5%) for Work by subcontractors. To the net subcontract amount, the Contractor may add five percent (5%).

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

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

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

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

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

### § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, 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. If Contractor's Work shall fall behind schedule for reasons that are not excused under the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule without any claim for additional compensation.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

§ 8.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.8 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

### § 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 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 other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

§ 8.3.3 The Contractor shall not be entitled to an increase in the Contract Sum as a result of any delays in the progress of Work.

§ 8.3.4 If the Contractor, but for a delay not within the Contractor's control, would have completed prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Owner or 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 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, partial lien waivers and affidavits and shall reflect retainage if provided for in the Contract Documents. The Contractor shall submit a signed certification with each Application for Payment stating that all insurance required by the Contract Documents to be maintained by the Contractor remain in full force. Failure to submit such a certification shall be grounds to withhold payment in full or in part.

§ 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 paragraph will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the subcontract.

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. The 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.

*(Paragraph deleted)*

§ 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 Each partial payment request shall be made on or about the tenth (10<sup>th</sup>) day of each month 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, and ninety percent (90%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the Site up to the first day of that month, less the aggregate of previous payment in each case.

§9.3.5 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 Act. Each payment request shall include properly 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.

§9.3.6 Provided that there are no outstanding liens or claims, and that, in the opinion of the Owner, the previous work has been done properly and is on schedule for completion of construction, and the unpaid balance in each case is sufficient to complete the unfinished work upon fifty percent (50%) completion of each trade line item, the Owner shall have the option, in its sole discretion, to make subsequent payments in each case for ninety-five percent (95%) of the value of the completed Work, the retainage thus being reduced to five percent (5%).

§9.3.7 Upon giving ten (10) days in writing to the Contractor, the full contract retainage may be reinstated and the retention restored to the basis established in paragraph 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.

#### § 9.4 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.

§9.4.3 The first payment application shall be accompanied by the Contractor's Partial Waiver of Lien only for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver, and by the Partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment application to the extent of that payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors, and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanic's Lien Act and showing in detail the sources of all labor and materials used and contracted to be used on the job, including names and addresses of subcontractors and material suppliers; amounts paid and remaining due to each; together with all other documents as shall, in the Owner's and Architect's judgment, be necessary to waive all claims of liens to date and comply with all applicable state and local laws. Notwithstanding any other provision in the Contract Documents, the Owner shall not, in any manner, be deemed or intended to have waived any claim by making a final payment or a progress payment of any amount.

## § 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.

#### § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After approval, the Owner shall make payment in accordance with the Prompt Payment Act.

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

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor. Notwithstanding Section 4.2.4, the Contractor, the Architect and Subcontractor may communicate directly on the matters covered by this paragraph.

§ 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.

*(Paragraph deleted)*

#### § 9.7 FAILURE OF PAYMENT

*(Paragraph deleted)*

Intentionally Deleted.

#### § 9.8 SUBSTANTIAL COMPLETION

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

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract

Init.

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

#### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion has been approved for occupancy by the Architect and authorized by public authorities having jurisdiction over the Project.

**§ 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** 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 nor affect the Date of Substantial Completion or the commencement of any warranty.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3

**§ 9.10.2** Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete..

**§ 9.10.3** Sections 9.10.3 is amended in its entirety to read: Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents 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, submitted on such other form as may be prescribed by the Owner;

Init.

- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by an Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 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;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner 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 prescribed by the Owner;
- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents; and
- .8 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein.

**§ 9.10.4**

*(Paragraphs deleted)*

If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or supplier liens or claims, including all personnel and consultant costs and reasonable attorneys' fees.

**§ 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 BACKCHARGES**

The Owner shall be entitled to backcharge the Contractor for amounts charged by the Architect to the Owner for any Architect's Additional Services resulting from or due to Contractor's failure to comply with the Contract Documents.

**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 All persons at the Site and other persons who may be affected by the Work or the operations of the Contractor;
- .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 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.

#### § 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. U. 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 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

Init.

(other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

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

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

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

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, to prevent threatened damage, injury or loss. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.

### 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 State of Illinois and that has at least an "A-VII" rating as defined in Best's Key Rating such insurance as required in the Contract Documents and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or a Subcontractor or anyone directly or indirectly employed by 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 the limits of liability specified in the Contract Documents. All coverage shall be written on an occurrence basis only 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

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*(Paragraph deleted)*

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

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

§11.1.5 Certificates of Insurance for the above coverages shall be submitted to the Architect and Owner for transmittal to the Owner prior to the start of construction. Contractor's certificates shall be in duplicate on standard Accord forms. Coverages for the insurance required herein shall be rated A-: VII for better by A.M. Best & Company.

#### § 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 Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Illinois and that has at least a "A-VII" rating as defined in Best's Key Rating, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the Site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 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 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. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on Site and the capital value of which is not included in the Work. The Contractor shall make his own arrangements for any insurance he may require on such construction equipment.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that 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.

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§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

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

*(Paragraph deleted)*

#### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

#### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

§ 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 Intentionally Deleted.

§ 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

Notwithstanding any other provision in the Contract Documents, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, or its insurance carrier may have against the Contractor, any subcontractor of any tier, or any of their employees, agents, officers or directors.

§ 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, 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 Intentionally Deleted.

§ 11.3.10 Intentionally Deleted.

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish performance security for the Work. All contracts shall require a Performance and Labor and Material Bond written on A.I.A. Document A312 covering the faithful performance by the Contractor of the Work specified in accordance with plans and specifications and according to the time and terms and conditions of the contract, and also that the Contractor shall properly pay all debts incurred by him in the prosecution of the Work, including those for labor and materials furnished. The cost of each bond shall be included in the Contract Sum. The amount of the bonds shall be equal to one hundred percent (100%) of the Contract Sum. The Contractor shall include in bonds provisions, as well as guarantee faithful performance of the prevailing wage provisions of the contract. Bonds shall be written by surety approved by Owner with a minimum rating of A- in

A.M. Best's Insurance Guide, current edition. The Company must also be licensed in the State of Illinois. Bonds shall be issued by a surety satisfactory to the Owner and shall name the Owner as a primary co-obligee.

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

§11.4.3 The Contractor shall deliver the required bonds to the Owner not later than three (3) days following the date the agreement is entered into, or if the Work is to be commenced prior thereto in response to a Letter of Intent, the Contractor shall, prior to the commencement of the Work, submit the evidence satisfactory to the Owner that such bonds will be furnished.

§11.4.4 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§11.4.5 All insurance coverage provided by insurance companies having policyholder ratings no lower than "A" and financial ratings no lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract.

#### §11.5 Additional Insured Requirements

§11.5.1 The Owner, and Architect and their officers, agents and employees shall be named as Additional Insureds on all insurance required to be acquired and maintained by the Contract Documents. All insurance required of the Contractor and all Subcontractors of any tier shall state that the coverage afforded to the Additional Insureds shall be primary insurance of the Additional Insureds with respect to claims arising out of operations performed by or on their behalf. If the Additional Insureds have other insurance which is applicable to the loss, it shall be on the excess or contingent basis.

§11.5.2 The Contractor shall require that every Subcontractor of any tier obtain insurance of the same character as the Contractor, naming the same Additional Insureds as the insurance required of the Contractor. Before the commencement of any Work by any Subcontractor of any tier, the Contractor shall obtain and furnish the Owner and the Owner's representative with Certificates of Insurance naming the Owner, the Owner's representative, and all of their officers, directors, commissioners, officials, employees, consultants, volunteers and agents, as Additional Insureds on the insurance required to be obtained by each Subcontractor of any tier. The Contractor shall also submit a certification, signed by each Subcontractor of any tier, with each Request for Payment, stating that all required insurance is in force for each and every respective Subcontractor of any tier. Failure to submit such a certification signed by all Subcontractors shall be grounds to withhold payment in full or in part.

§11.5.3 All insurance required of the Contractor and all Subcontractors of any tier shall provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, directors, commissioners, officials, employees, consultants, volunteers, or agents.

§11.5.4 All insurance required of the Contractor and all Subcontractors of any tier shall provide that the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§11.5.5 Under no circumstances shall the Owner be deemed to have waived any of the insurance requirements of this Contract by any action or omission, including, but not limited to:

- a. allowing any work to commence by the Contractor or any Subcontractor of any tier before receipt of Certificates of Insurance;
- b. failing to review any Certificates of Insurance received;
- c. failing to advise the Contractor or any Subcontractor of any tier that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner; or

Init.

- d. issuing any payment without receipt of a sworn certification from the Contractor and all Subcontractors of any tier stating that all the required insurance is in force.

The Contractor agrees that the obligation to provide the insurance required by the General Conditions as amended is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction, or omission by the Owner. Contractor shall also protect the Owner by specifically incorporating this Paragraph into each subcontract entered into and also requiring that every Subcontractor incorporate this Paragraph into each sub-subcontract it enters into.

**§11.5.6** Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or either of their respective insurance carriers. The Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, or any Subcontractor's interest or liabilities, but are merely minimums. The obligation of the Contractor, and every Subcontractor of any tier to purchase insurance shall not, in any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the Contractor's or any Subcontractor's insurance.

**§11.5.7** The Contractor shall notify Owner, in writing, of any actual or possible claim for personal injury or property damage relating to the work, or of any occurrence which might give rise to such a claim, promptly upon obtaining first knowledge of same.

## **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** Intentionally Deleted.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Owner or 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 and its consultant'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 obligation under 3.5, if, within one year after the date of Substantial Completion of the Work, the Contractor shall correct Work promptly after receipt of written notice from the Owner to do so. The one year period for correction of the Work shall not waive any warranty rights of the Owner. 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 be extended by corrective Work performed by the Contractor for that Work.

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

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

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

### § 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 State of Illinois. Any action brought with respect to the Contract shall be brought only in the Circuit Court of Du Page County, 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. Notwithstanding any of the provisions of this paragraph, however, the Owner may assign the Contract to an affiliated entity without the consent of the Contractor.

§ 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 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 Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work.

§ 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 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 or consultant's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the 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 Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of five (5) years after final payment. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for five (5) years after final payment.

*(Paragraphs deleted)*

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

#### § 14.1.1 The Contractor

*(Paragraphs deleted)*

has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

§ 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 14.1.2 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. The amount the Contractor is entitled to recover, pursuant to this paragraph shall be subject to the provisions of Section 7.5.

§ 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 for cause if the Contractor:

- .1 Fails to supply adequate properly skilled workers or proper materials;
- .2 Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
- .3 Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;
- .5 Anticipatorily breaches or repudiates the Contract;
- .6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract or the Project Schedule; or
- .7 Endangers the performance of this Contract

#### § 14.2.2

*(Paragraphs deleted)*

The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured within seven (7) days, the termination for default is effective on the date specified in the Owner's written notice, subject to any rights of the surety. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs incurred by the Owner to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification..

§ 14.2.3 Section 14.2.3 is amended in its entirety to read: Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner, Contractor and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 If the unpaid balance of the Contract Sum less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's or Consultant's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract

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§ 14.2.5 If the Contractor files for protection, or a petition is filed against it, under the Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an immediate filing, Contractor agrees that Owner may petition the Bankruptcy Court to lift the Automatic Stay and agrees to permit Owner to terminate 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 not 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.

§14.3.3 Any adjustment made in the Contract Sum pursuant to paragraph 14.3.2 shall be subject to the provisions of paragraphs 7.3.6.1 through 7.3.6.5. Overhead shall be allowed to the extent of one-half (1/2) the percentage given in paragraph 7.5.

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this paragraph shall be by a Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 Cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner, Contractor, and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts or purchase orders.

§ 14.4.3 In case of termination for the Owner's convenience, the Contractor will be entitled to compensation only for the following items:

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
- .4 Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor will not be compensated for the cost of terminating subcontracts, which must be terminable at no cost to the Owner if the Contract is terminated. The Contractor will not be compensated for the cost of any idled employees. The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.3 as a consequence of the Owner's termination of the Contract for convenience. The

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Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.3.1, 14.4.3.2, 14.4.3.3 and 14.4.3.4 of this Subsection 14.4.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract

**§14.4.4** Allowances shall be made for payment previously made to the Contractor for the terminated portion of the Work, and claims which the Owner has against the Contractor under the Contract, and for the value of materials, supplies, equipment or other items that are part of the cost of the Work to be disposed of by the Contractor.

**§14.4.5** The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

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

#### § 15.1.2 NOTICE OF CLAIMS

**Time Limits on Claims.** Claims by either party must be initiated by written notice to the other party and to the Initial Decision Maker within 7 days after occurrence of the event giving rise to such Claim whether or not any impact in money or time has then been determined. Claims must be initiated by written notice to the Architect and the other party. Failure to comply with the literal language of this provision shall deprive any court of jurisdiction to consider Contractor's claim.

As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred.

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

**§ 15.1.4 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within seven (7) days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4. The Site conditions contemplated by this Subparagraph include, but are not limited to, materials containing asbestos, polychlorinated biphenyl (PCB), or hazardous materials.

**§ 15.1.5 Claims for Additional Cost.** If the Contractor wishes to make 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.

*(Paragraphs deleted)*

**§ 15.1.6**

*(Paragraphs deleted)*

If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1.

**§ 15.1.7** Articles 15.1.5 and 15.1.6 are not intended to, and shall not, create any additional grounds upon which the Contractor shall be entitled to an increase in the Contract Sum beyond those grounds provided elsewhere in this Contract. Also, in no event shall the Contractor make a claim for additional costs resulting from any delays in the Progress of the Work.

**§ 15.1.8 Claims for Additional Time**

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

**§ 15.1.8.2** 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.

**§ 15.1.9 Injury or Damage to Person or Property.** If either party to the Contract 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.

**§ 15.1.10** 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.

**§ 15.1.10.1** The Contractor agrees to waive any right which it may have to punitive damages from the Owner and agrees not to make any claim or demand for punitive damages against the Owner.

**§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 15.2.1** Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

*(Paragraphs deleted)*

**§ 15.2.2** The Architect will review Claims and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

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§ 15.2.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.5 If the Architect 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 provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both.

*(Paragraphs deleted)*

§15.2.6 A decision by the Initial Decision Maker shall not constitute a waiver by either party to have a claim resolved through judicial decision as provided herein.

§ 15.2.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or 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 arising out of or relating to the Contract, except those expressly waived herein, may be subjected to mediation by agreement of the parties.

§ 15.3.2 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.

§ 15.3.3 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.

*(Paragraphs deleted)*

§ 15.3.4 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.

*(Paragraph deleted)*

§ 15.3.5 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.

*(Paragraph deleted)*

§ 15.3.6 A decision by the Initial Decision Maker shall not constitute a waiver by either party to have a claim resolved through judicial decision.

*(Paragraph deleted)*

§ 15.3.6.1 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.

*(Paragraph deleted)*

§ 15.3.7 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.

*(Paragraph deleted)*

§ 15.3.8 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.

## §16.1 EQUAL OPPORTUNITY

§16.1.1 The Contractor shall maintain policies of employment as follows: The Contractor and all subcontractors shall not discriminate against any employee or application for employment because of race, religion, color, sex, national origin or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment upgrading, demolition, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the policies of non-discrimination.

§16.1.2 The Contractor and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age. Contractor shall also and in addition to the provision set out in this Article 16, remain in compliance with Illinois Public Works Employment Discrimination Act (775 ILCS 10/1 *et seq.*) and the Illinois Human Rights Act Article IL Employment (775 ILCS 5/2-101 *et seq.*)

§16.1.3 All Contract for Work herein are subject to the provisions of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission.

## §17.1 SEXUAL HARASSMENT POLICY

§17.1.1 Pursuant to Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) ("Rights Act"), all Contractors and subcontractors must have in force and effect a written sexual harassment policy which includes at a minimum the following provisions:

- .1 a statement of illegality of sexual harassment;
- .2 the definition of sexual harassment under Illinois law;
- .3 a description of sexual harassment utilizing examples;
- .4 an internal complain process, including penalties;
- .5 the legal recourse, investigative and complaint process available through the Illinois Department of Human

Init.

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- Rights ("Department") and the Illinois Human Rights Commission ("Commission");
- .6 directions on how to contact the Department and the Commission; and
  - .7 protection against retaliation as provided by Section 6-101 of the Rights Act.

The Contractor understands, represents and warrants to the Owner that Contractor and its subcontractors (for which the Contractor takes responsibility to ensure that they comply with the Rights Act) are in compliance with Section 2-105 of the Rights Act and will remain in compliance with Section 2-105 of the Rights Act for the entirety of the Work. A violation of Section 2-105 is cause for the immediate cancellation of this contract. However, any forbearance or delay by the Owner in canceling this contract shall not be construed as, and does not constitute, Owner's consent to such violation and a waiver of any rights the Owner may have, including without limitation, cancellation of this contract.

#### **§18.1 PREVAILING RATE OF WAGE**

**§18.1.1** All Contracts for Work herein are subject to the provisions of Chapter 48, Section 39s-1 through 39s-12. Illinois Revised Statutes, providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged on the Work. The Contractor shall be solely responsible for maintaining accurate records as required by statute, and shall be solely liable for paying the difference between prevailing wages and wages received as indicated in Section 29s-11.

**§18.1.2** If, during the course of work under the contract, the Department of Labor revised the prevailing rate of hourly wages for any trade or occupations, the Contractors shall have the sole responsibility and duty to ensure that the revised prevailing rate of hourly wages is paid by the Contractors to each worker to whom a revised rate is applicable. Revisions of the prevailing wages as set forth above shall not result in an increase in the contract sum. A copy of the Owner's prevailing wage determination is attached hereto as PWR-1 through PWR-3.

**§18.1.3** This Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act.

**§18.1.4** The Contractors, agents, and employees shall comply with the terms and provisions of the Wages of Employees on Public Works Act regarding the policy of the State of Illinois pertaining to the payment of the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed.

**§18.1.5** The Contractors indicate that by executing the contract, he/she certifies that he/she is not barred from bidding on the contract as a result from bid rigging or bid rotation under Article 33E of the Criminal Code of 1961.

*(Paragraph deleted)*

# Additions and Deletions Report for AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

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## PAGE 1

### Village of Carol Stream - Village Hall and Police Addition and Remodeling

...

*(Name, legal status and address)*

Village of Carol Stream  
500 North Gary Ave.  
Carol Stream, IL 60188

...

Williams Architects  
500 Park Boulevard, Suite 800  
Itasca, IL 60143

## PAGE 2

15 CLAIMS AND DISPUTES

16 EQUAL OPPORTUNITY

17 SEXUAL HARRASSMENT POLICY

18 PREVAILING RATE OF WAGE

## PAGE 3

1.1.1, ~~3.11.1~~ 3.11.1

...

8.3.1, 11.3.10, ~~13.1.1~~ 13.1.1, 15.3.2, 15.4

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~~2.4~~, ~~2.4.1~~, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

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~~2.4, 2.4.1~~, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

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~~2.4, 2.4.1~~, 3.1.3, 3.5, 3.10.2, 4.2.7

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9.7, 11.3.9, 11.3.10, ~~13.1, 13.1.1~~, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

#### PAGE 4

1.1.1, ~~2.4, 2.4.1~~, 3.4.2, 3.7.4, 3.8.2.3, ~~3.11, 3.11.1~~, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

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3.2.4, ~~3.7.4, 6.1.1, 3.7.46.1.1~~, 8.3.2, 10.3.2, 15.1.5

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~~4.6, 1.6.1~~, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

#### PAGE 5

3.3.2, 3.18, ~~5.3, 5.3.1~~, 6.1.3, 6.2, 9.5.1, 10.2.8

...

~~2.4, 2.4.1~~, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

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3.14.2, 9.9.1, 10.2.1.2, 10.2.5, ~~10.4, 10.4.1~~, 11.3.1, 12.2.4

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~~2.3, 2.4, 2.3.1, 2.4.1~~, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

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3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, ~~10.4, 10.4.1~~, 14.3.2, 15.1.5, 15.2.5

#### PAGE 6

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, ~~3.13, 3.13.1~~, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

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3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, ~~10.4, 10.4.1~~, 14.3, 15.1.5, 15.2.5

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4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, ~~4.2.3~~, 12.3.1, 14.2.4, 14.4.3

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10.2.8, ~~10.4~~10.4.1

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1.5, 3.2.3, 3.6, 3.7, 3.12.10, ~~3.13~~, 3.13.1, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, ~~13.1~~, 13.1.1, 13.4, 13.5.1, 13.5.2, ~~13.6~~, 13.6.1, 14, 15.2.8, 15.4

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#### PAGE 7

1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, ~~3.13~~, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

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1.5, 2.1.1, ~~2.3~~, ~~2.4~~, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, ~~4.2.3~~, 12.3.1, 13.2.2, 14.3, 14.4, 15.2.7

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1.1.1, 1.1.6, 1.1.7, 1.5, 2.2.5, 3.2.2, ~~3.11~~, 3.11.1, 3.17, 4.2.12, ~~5.35~~3.1

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4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, ~~4.2.3~~, 12.3.1, 13.7, 14.2.4, 14.4.3

#### PAGE 8

3.3.2, 3.18, 4.2.3, ~~5.3~~, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

...

3.3.1, 4.2.2, 4.2.7, ~~5.3~~, 5.3.1, 10.1, 10.2, 10.4

#### PAGE 9

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, ~~11.4.1~~, 11.4.1.1, 12.2.1, 13.5

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3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, ~~10.4~~, 10.4.1, 14.3.2, 15.1.5, 15.2.5

#### PAGE 11

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

...

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.~~

...

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

...

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

#### §1.1.9 PRODUCT

The term "product" as used in the Contract Documents includes materials, systems and equipment.

#### §1.1.10 PROVIDE

Where the word "provide" appears, it shall be taken and interpreted to mean "The Contractor shall furnish all labor, material, equipment and accessory appurtenances or materials necessary to install and complete the construction of the Project.

§1.1.11 The term "Site" refers to that portion of the property on which the Work is to be performed or which has been otherwise set aside for use by the Contractor.

§1.1.12 The term "Punch List" means, collectively, unfinished items of the construction of the Project, which unfinished items of construction are minor or insubstantial details of construction, mechanical adjustment or decoration remaining to be performed, the non-completion of which would not materially affect the use of the Project, and which are capable of being completed within thirty (30) days of Substantial Completion, subject to the availability of special order parts and materials.

§ 1.1.13 When the term Construction Manager is used in the Contract Documents, it shall mean the Contractor and the term Contractor shall mean the Construction Manager.

PAGE 12

§ 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. Large scale details on the Drawings shall take precedent over measurements. §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.

§ 1.2.2 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.

§ 1.2.4 Should discrepancies appear among the Contract Documents and existing conditions, the Contractor shall request an interpretation from the Architect before bidding. If the Contractor fails to make such a request, it is presumed that both provisions were included in the Bid and the Architect shall determine which of the conflicting requirements will govern. The Contractor shall perform the Work at no additional cost to the Owner in accordance with the Architect's determination.

...

§ 1.4.1 In the event of conflict among the various provisions of the Contract Documents, the terms shall be interpreted in the following order of priority:

- .1 Modifications to the Contract
- .2 The Contract
- .3 General Conditions of Contract as modified.

In the event of a conflict between Drawings and Specifications, the more stringent, higher quality requirements shall be included. Details in drawings control over large-scale drawings.

§ 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 Owner's or Architect's consultants' reserved rights.

PAGE 13

~~§ 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~~ INFORMATION AND SERVICES REQUIRED OF THE OWNER § 2.2.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

~~§ 2.2.1~~ 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.

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

~~§ 2.2.3~~ 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. 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.

~~§ 2.2.4~~ 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.

## PAGE 14

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such 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 compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents, performed, has correlated personal observations with the requirements of the Contract Documents, and has notified the Architect of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 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 errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor must carefully study and compare the Contract Documents among themselves and further compare the Contract Documents with any other information furnished by the Owner before commencing Work at the Site and at frequent intervals during its progress. 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. Owner any nonconformity discovered or made known to the Contractor.

§ 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 must take field measurements and verify Site conditions, and must carefully compare such field measurements and Site conditions and other information known to the Contractor with the Contract Documents, before ordering any material or doing any Work at the Site. The Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Owner any nonconformity discovered or made known to the Contractor.

§ 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 Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor must make frequent inspections during the progress of the Work to confirm that Work previously performed by the Contractor is in compliance with the Contract Documents and applicable laws and regulations bearing on the performance of the Work and that portion of Work previously performed by the Contractor or by others are in proper condition to receive subsequent Work.

§ 3.2.5 If the Contractor believes that any portions of the Contract Documents do not comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, or any orders by code enforcement officials or the Owner or its designees acting in the capacity of building code inspectors, the Contractor must promptly notify the Owner and the Architect of the non-compliance as provided in Section 3.2.6 and request direction before proceeding with the affected Work.

§ 3.2.6 The Contractor must promptly notify the Owner and the Architect in writing of any apparent errors, inconsistencies, omissions, ambiguities, construction impracticalities or code violations discovered as a result of the Contractor's review of the Contract Documents including any differences between actual and indicated dimensions, locations and descriptions, and must give the Owner and the Architect timely notice in writing of same and of any corrections, clarifications, additional Drawings or Specifications, or other information required to define the Work in

greater detail or to permit the proper progress of the Work. The Contractor must provide similar notice with respect to any variance between its review of the Site and physical data and Site conditions observed.

§ 3.2.7 If the Contractor performs any Work involving an apparent error, inconsistency, ambiguity, construction impracticality, omission or code violation in the Contract Documents of which the Contractor is aware, or which could reasonably have been discovered by the review required by Section 3.2, without prompt written notice to the Owner and the Architect and request for correction, clarification or additional information, as appropriate, the Contractor does so at its own risk and expense and all claims relating thereafter are specifically waived.

§ 3.2.8 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, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Section 3.2, 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 Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

#### PAGE 15

§ 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, for and have control over, over the 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 Work. If the Contractor determines that such means, methods, techniques, sequences or and procedures may not be safe, the Contractor shall give timely-immediate written notice to the Owner and the 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. written instruction by the Owner. The Contractor is responsible for completion of the Work in full compliance with all with applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.

...

§ 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 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Persons permitted to perform Work under Contractor or any Subcontractor or Sub-Subcontractor shall meet all employment eligibility, safety training, security or drug/alcohol testing requirements required by law or by Owner. Any person not complying with all such requirements shall be immediately removed from the Site.

#### PAGE 16

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 defects or faults, and in conformance to 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. Work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. Liability or refusal of the Subcontractor or supplier responsible for the defective Work to 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. The Contractor's warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, or are they limited by any other remedies provided in the Contract Documents. The Contractor shall also be liable for any damage to property or persons (including death) including consequential and direct damages relating to any breach of the Contractor's warranty.

§ 3.5.2 The Contractor shall furnish maintenance and 24-hour callback service for the equipment provided by it for a period of three (3) months after completion and acceptance of the Work. The service shall include regular examinations of the installation by competent and trained employees of the Contractor, and shall include all necessary adjustments, greasing, oiling, cleaning, supplies and parts to keep the equipment in proper operation except such parts made necessary by misuse, accidents, or negligence not caused by the Contractor or any of its subcontractors.

...

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

§ 3.6.1 The Owner enjoys tax exempt status as an Illinois municipality. To enjoy the cost-savings benefits of its tax-exempt status, the Owner will provide a Tax Exemption Certificate to the Contractor for use on the Project. The Contractor shall use that certificate to exempt any purchases made for the Work from taxes. Contractor will pass on all savings for the tax-exempt status to the Owner. The Contractor agrees to bind all Subcontractors of any tier to the obligation to present and use the Tax Exemption Certificate and pass all savings to the Owner.

§3.6.2 The Contractor will require all Subcontractors and bidders to provide cost information for materials separate from other costs for labor, profit, overhead, etc. to allow the Owner to verify that no taxes are to be paid on material procurement and that such savings shall be passed on to the Owner.

§3.6.3 The Contractor will maintain all records, invoices, receipts, or other accounting data regarding material purchases and will allow, upon written request of the Owner and within a reasonable time frame after receipt of such request, the Owner to audit such records to verify tax savings. If an audit reveals taxes paid or savings not transferred to the Owner, the Contractor will be liable to the Owner for those amounts and the Owner may back-charge the Contractor for those amounts if a balance of funds due and payable remains at the time of such discovery.

.1 The Contractor will require all Subcontractors of any tier maintain all records, invoices, receipts, or other accounting data regarding material purchases. The Contractor will collect such records with each application for payment it receives from its Subcontractors and shall maintain such records in the same manner and location as the Contractor's records.

.2 The Contractor will ensure its Subcontractors and any lower-tier Subcontractors include these obligations in their contracts and bind themselves in the same manner as Contractor is bound to the Owner.

PAGE 17

§ 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.~~

§ 3.7.1, The Owner 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.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or if the Contractor should have reasonably recognized, within construction industry standards, that such Work was performed contrary to applicable laws, statutes or ordinances, rules and regulations or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to ~~correction~~ correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site ~~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 written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~21~~ seven (7) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the ~~site~~ Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

~~§ 3.7.5 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.~~

...

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the ~~site~~ Site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the ~~site~~ 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 3.8.2.2.3.8.2.1.~~

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness in sufficient time to avoid delay in the Work.

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project ~~site~~ Site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent must provide his or her email address, cell phone number and pager number to Owner and Architect and must be available to be contacted during all business hours, and outside of business hours in the event of an emergency.

PAGE 18

§ 3.10.1 The Contractor, ~~promptly after being awarded within twenty-one (21) days of the execution of the Contract,~~ shall prepare and submit for the Owner's and Architect's ~~information approval,~~ a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, 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. Thereafter, the Contractor shall prepare and update the construction schedule on a monthly basis ("Current Construction Schedule"), if not more frequently at the Contractor's discretion, to be submitted to the Owner with each Application for Payment.

§ 3.10.2 The Contractor shall prepare a submittal schedule, ~~promptly within twenty-one (21) days~~ after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Owner's and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

...

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

§3.11.1 Plans and sections of all concealed work, particularly concealed piping and conduit and deviations from conditions shown on the Contract Documents, shall be shown and dimensioned on the "As Built" drawings. Contractor shall develop layout drawings for all concealed work that is schematically indicated on Contract Drawings.

§3.11.2 The Contractor and his subcontractors shall maintain 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 reproducible transparencies of the Contract Documents 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.

§3.11.3 The Contractor shall cause the Plumbing, Mechanical, and Electrical, subcontractors to provide the Contractor with the three (3) copies of all operating manuals at the time of delivery of each major piece of equipment.

PAGE 19

§ 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 Owner and 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.

...

§ 3.12.7 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. The Contractor must correct at its cost, and without any adjustment in Contract Time, any Work the correction of which is required due to the Contractor's failure to obtain approval of a submittal required to have been obtained prior to proceeding with the Work, including, but not limited to, correction of any conflicts in the Work resulting from such failure.

§ 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~~ Architect, after consultation with the Owner, 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 specifically advise the Architect in writing, or on resubmitted Shop Drawings, Product Data, Data Samples or similar submittals, to of any 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.~~ no approval of such resubmittal shall be given.

PAGE 20

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

- .1 Required for compliance with interpretation of code requirements or insurance regulations then existing.
- .2 Unavailability of specified products through no fault of the Contractor.
- .3 Subsequent information discloses inability of specified products to perform properly or to fit in designated space.
- .4 Manufacturer / fabricator refuses to certify or guarantee performance of specified product as required.
- .5 When it is clearly seen in the judgment of the Architect 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 accomplished by adequate technical and cost data. Requests shall include a complete description of the proposed substitution, name of material or equipment for which it is to be substituted, drawings, costs, performance and test data, and any other data or information necessary for a complete evaluation by the Architect.

The Contractor shall confine operations at the ~~site~~ 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~~ Site with materials or equipment.

PAGE 21

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, law, the Contractor shall waive all right of contribution and indemnify, hold harmless and defend the Owner and Architect and their respective officers, agents, employees and consultants from and against all claims, damages, losses and expenses of whatever type and nature, and including but not limited to attorneys' fees, fees and economic damages, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), Work or a failure to fulfill a specific responsibility under this Agreement, but only to the extent caused by the negligent in whole or in part by the negligent, intentional or reckless acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.18.Agreement.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a any and all claims against the Owner or Architect or any of their agents or employees and consultants by any employee of any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they any of them may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of this Section shall not be limited in anyway by any limitation on the amount or types 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 any Subcontractor under any workmen's compensation act, disability benefits acts or other employee benefits acts.

§ 3.18.3 Claims, damages, losses or expenses, as these words are used in this Contract, shall be construed to include, but not be limited to, (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items or equipment, whether or not the same be owned, furnished or loaned by Owner; (2) all attorneys' fees and costs incurred in defense of the claims 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 Only to the extent prohibited by the Illinois Contractor Contract indemnification for negligence per 740 ILCS 35 et seq., the indemnification obligations of contractor under this Contract shall not extend to the liability of Owner, any Owner's Representative, or the Architect, or their agents, consultants or employees arising out of their own negligence.

### **§3.19 WORKS BY TRADE UNIONS**

§3.19.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect 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 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.

## **PAGE 22**

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

...

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

§ 4.2.3 On the basis of the ~~site~~ 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.

#### PAGE 23

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the~~ The Owner and Contractor shall endeavor to communicate with each other through the Architect ~~include the Architect in communications about matters arising out of or relating to the Contract, the aspects of the Contract which involve the Architect.~~ 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.~~ Owner..

...

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; ~~issue Certificates of Substantial Completion pursuant to Section 9.8; completion, will 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~~ and will issue a final Certificate for Payment ~~pursuant to Section 9.10 upon compliance with the requirements of the Contract Documents and approval of the Owner.~~

§ 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~~ Site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations within 15 days after written request is made.

#### PAGE 24

§ 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~~ Documents, if reasonably inferable from the Contract documents as being necessary to produce the intended results.

...

§ 4.3 Intentionally Deleted.

...

§ 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~~ 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~~ 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.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 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.

§ 5.2.2 All subcontracts shall be in writing, and shall be assignable by the General Contractor to the Owner. The Contractor shall not contract with a proposed person or entity to whom the Owner ~~or Architect~~ has made ~~reasonable~~ and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

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

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

PAGE 25

§ 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.~~

Intentionally Deleted.

§ 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.~~

...

§ 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~~ Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

#### PAGE 26

~~§ 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.~~

...

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

...

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

...

§ 7.2.2 The Contractor must submit change proposals covering a contemplated Change Order within ten (10) days after request of the Owner, or the Architect or within ten (10) days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work which is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in (i) the Contract Sum, or (ii) the Contract Time. Any proposed adjustment must include detailed documentation including but not limited to: cost, properly itemized and supported by sufficient substantiating data to permit evaluation including cost of labor, materials, supplies and equipment, rental cost of machinery and equipment, additional bond cost, plus a fixed fee for profit and overhead (which includes office overhead and site-specific overhead and general conditions) of ten percent (10%) if the Work is performed by the Contractor, or five percent (5%) if the Work is performed by a Subcontractor or Sub-subcontractor. The Subcontractors or Sub-subcontractors overhead and profit in turn must not exceed a total aggregate of ten percent (10%). Change proposals will be binding upon the Contractor and may be accepted or rejected by the Owner in its discretion. The Owner may, at its option, instruct the Contractor to proceed with the

Work involved in the change proposal in accordance with this Section 7.2.2 without accepting the change proposal in its entirety.

§ 7.2.3 If the Owner determines that a change proposal is appropriate, the Architect will prepare and submit a request for a Change Order or Contract Amendment providing for an appropriate adjustment in the Contract Sum or Contract Time, or both, for further action by the Owner. No such change is effective until the Owner and Architect sign the Change Order.

PAGE 28

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

...

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

#### **§7.5 AGREED OVERHEAD AND PROFIT RATES**

§7.5.1 For any adjustments to the Contract Sum based on other than the unit prices method, the Contractor agrees to charge and accept payment for his overhead and profit at the following percentages of the cost attributable to the change in the Work;

- .1 Ten percent (10%) for Work by the Contractor not involving Subcontractors;
- .2 Five percent (5%) for Work by Subcontractors.
- .3 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;
- .4 For additional Work ordered as described above which will be executed by Subcontractors for the Contractor, it is agreed Subcontractors will be permitted to charge ten percent (10%) for Work not involving subcontractors and five percent (5%) for Work by subcontractors. To the net subcontract amount, the Contractor may add five percent (5%).

PAGE 29

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

...

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement Contract, 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. If Contractor's Work shall fall behind schedule for reasons that are not excused under

the terms of the Contract, Contractor shall add additional workers or shifts, and/or work overtime as necessary to maintain the Construction Schedule without any claim for additional compensation.

§ 8.2.4 The Contractor must conform to the most recently approved Construction Schedule. The Contractor must complete the indicated Work or achieve the required percentage of completion, as applicable, within any interim completion dates established in the most recently approved Construction Schedule.

§ 8.2.5 The Contractor must maintain at the Site, available to the Owner and the Architect for their reference during the progress of the Work, a copy of the approved Construction Schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved Construction Schedule the actual commencement date, progress, and completion date of each scheduled activity indicated on the Construction Schedule.

§ 8.2.6 The Contractor represents that its bid includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial and final Completion. Accordingly, the Contractor may not make any claim for delay damages based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.2.7 If the Contractor's progress is not maintained in accordance with the approved Construction Schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or has evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved Construction Schedule, the Contractor must, promptly and at no additional cost to the Owner, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner.

§ 8.2.8 The Owner reserves the right to issue a written directive to accelerate the Work that may be subject to an appropriate adjustment, if any, in the Contract Sum. If the Owner requires an acceleration of the Construction Schedule and no adjustment is made in the Contract Sum, or if the Contractor disagrees with any adjustment made, the Contractor must file a claim as provided in Article 15 or the same will be deemed to be conclusively waived.

PAGE 30

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

...

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

§ 8.3.4 If the Contractor, but for a delay not within the Contractor's control, would have completed prior to the time set forth in the project schedule, the Contractor shall not be entitled to any recovery of damages arising out of any event of delay which prevented such early completion of the Work.

...

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

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such ~~application~~ 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, partial lien waivers and affidavits and shall reflect retainage if provided for in the Contract Documents. The Contractor shall submit a signed certification with each Application for Payment stating that all insurance required by the Contract Documents to be maintained by the Contractor remain in full force. Failure to submit such a certification shall be grounds to withhold payment in full or in part.

PAGE 31

§ 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 paragraph will not apply to routine retainage the Contractor intends to withhold from the Subcontractor pursuant to the subcontract.

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. The 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.

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

§9.3.4 Each partial payment request shall be made on or about the tenth (10<sup>th</sup>) day of each month 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, and ninety percent (90%) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the Site up to the first day of that month, less the aggregate of previous payment in each case.

§9.3.5 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 Act. Each payment request shall include properly 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.

§9.3.6 Provided that there are no outstanding liens or claims, and that, in the opinion of the Owner, the previous work has been done properly and is on schedule for completion of construction, and the unpaid balance in each case is sufficient to complete the unfinished work upon fifty percent (50%) completion of each trade line item, the Owner

shall have the option, in its sole discretion, to make subsequent payments in each case for ninety-five percent (95%) of the value of the completed Work, the retainage thus being reduced to five percent (5%).

§9.3.7 Upon giving ten (10) days in writing to the Contractor, the full contract retainage may be reinstated and the retention restored to the basis established in paragraph 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.

**PAGE 32**

§ 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-on-Site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.4.3 The first payment application shall be accompanied by the Contractor's Partial Waiver of Lien only for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's Partial Waiver, and by the Partial Waivers of Subcontractors and Suppliers who were included in the immediately preceding payment application to the extent of that payment. Application for Final Payment shall be accompanied by Final Waivers of Lien from the Contractor, Subcontractors, and Suppliers who have not previously furnished such Final Waivers. Final Waivers shall be for the full amount of the Contract. All applications for payment shall be accompanied by affidavits, in triplicate, from the Contractor and Subcontractors containing such information and in such form as to comply with the Illinois Mechanic's Lien Act and showing in detail the sources of all labor and materials used and contracted to be used on the job, including names and addresses of subcontractors and material suppliers; amounts paid and remaining due to each; together with all other documents as shall, in the Owner's and Architect's judgment, be necessary to waive all claims of liens to date and comply with all applicable state and local laws. Notwithstanding any other provision in the Contract Documents, the Owner shall not, in any manner, be deemed or intended to have waived any claim by making a final payment or a progress payment of any amount.

**PAGE 33**

§ 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. approval, the Owner shall make payment in accordance with the Prompt Payment Act.

...

§ 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. Notwithstanding Section 4.2.4, the Contractor, the Architect and Subcontractor may communicate directly on the matters covered by this paragraph.

...

~~§ 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.~~

~~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.~~  
Intentionally Deleted.

...

~~§ 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, Punch 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 for approval by the Owner 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 When the Owner and the Architect concur that the Work is substantially complete, 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.~~

#### PAGE 34

~~§ 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 has been approved for occupancy by the Architect 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.~~

...

~~§ 9.9.3 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. Documents nor affect the Date of Substantial Completion or the commencement of any warranty.~~

...

~~§ 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. When the Contractor has completed or corrected all items on the final Punch List and considers that the Work is complete and ready for final acceptance, the Contractor must give written notice to the Owner and the Architect and request a final inspection of the Work as provided in Section 9.10.2. The Contractor's notice and request for a final inspection must be accompanied by a final Application for Payment and the Submittals required by Section 9.10.3~~

~~§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond 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. Upon receipt of the Contractor's notice and request for final inspection, the Owner and the Architect will promptly make such inspection and, when the Owner and the Architect concur that the Work has been fully completed and is acceptable under the Contract Documents, the Architect will issue a Certificate of Final Completion to the Owner. The Contractor's notice and request for final inspection constitutes a representation by the Contractor to the Owner that the Work has been completed in full and strict accordance with terms and conditions of the Contract Documents. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is finally complete. In such case, the Contractor must bear the cost of any additional services of the Owner or the Architect until the Work is determined to be finally complete.~~

~~§ 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. Sections 9.10.3 is amended in its entirety to read: Neither final payment nor any remaining retained percentage will become due until the Contractor submits the following documents 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, submitted on such other form as may be prescribed by the Owner;

- .2 a release or waiver of liens on behalf of the Contractor and a similar release or waiver on behalf of each Subcontractor and supplier, accompanied by an Affidavit of Release of Liens (latest edition) or such other form as may be prescribed by the Owner;
- .3 a certificate evidencing that the Contractor's liability insurance and Performance Bond remain in effect during the one-year correction period following Substantial Completion as set forth in Section 12.2.2.1 and 12.2.2.2;
- .4 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;
- .5 consent of surety to final payment, submitted on AIA Document G707 (latest edition) or other form prescribed by the Owner;
- .6 other data required by the Owner 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 prescribed by the Owner;
- .7 a certified building location survey and as-built site plan in the form and number required by the Contract Documents; and
- .8 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein.

§ 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. If the Contractor is unable to secure from any Subcontractor or supplier a release or waiver required under the Contract, the Contractor must furnish a bond satisfactory to the Owner to indemnify the Owner and any co-obligees under the bond against any lien or claim from such Subcontractor or supplier. The Contractor must also indemnify the Owner for all costs incurred by the Owner in removing, discharging or otherwise settling all Subcontractor or supplier liens or claims, including all personnel and consultant costs and reasonable attorneys' fees.

PAGE 35

#### §9.11 BACKCHARGES

The Owner shall be entitled to backcharge the Contractor for amounts charged by the Architect to the Owner for any Architect's Additional Services resulting from or due to Contractor's failure to comply with the Contract Documents.

...

- .1 employees on the Work—All persons at the Site and other persons who may be affected thereby; by the Work or the operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, Site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site—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.

PAGE 36

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site—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~~ Site to be loaded so as to cause damage or create an unsafe condition.

...

§ 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~~ Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

#### PAGE 37

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the ~~site~~ 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~~ 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.

...

~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, must take all necessary action, without the necessity for any special instruction or authorization from the Owner or Architect, 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. The Contractor must promptly, but in all events within twenty-four (24) hours of the emergency, report such action in writing to the Owner and Architect. If the Contractor incurs additional costs on account of or is delayed by such emergency, the Contractor may request a change in the Contract Sum or Contract Time to account for such additional costs or delay in accord with Articles 7, 8 and 15. The Contractor must file any such request within ten (10) days of the emergency or it is deemed waived. Any adjustment in the Contract Sum or Contract Time shall be limited to the extent that the emergency work is not attributable to the fault or neglect of the Contractor or otherwise the responsibility of the Contractor under the Contract Documents.~~

...

§ 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 State of Illinois and that has at least an "A-VII" rating as defined in Best's Key Rating such insurance as required in the Contract Documents and 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:

...

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than the limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, Documents. All coverage shall be written on an occurrence basis only 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: payment

§ 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.

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

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

§11.1.5 Certificates of Insurance for the above coverages shall be submitted to the Architect and Owner for transmittal to the Owner prior to the start of construction. Contractor's certificates shall be in duplicate on standard Accord forms. Coverages for the insurance required herein shall be rated A-: VII for better by A.M. Best & Company.

PAGE 38

§ 11.3.1 Unless otherwise provided, the Owner Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, State of Illinois and that has at least a "A-VII" rating as defined in Best's Key Rating, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site Site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 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 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. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on Site and the capital value of which is not included in the Work. The Contractor shall make his own arrangements for any insurance he may require on such construction equipment.

PAGE 39

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

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

...

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

...

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

...

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. Notwithstanding any other provision in the Contract Documents, the Owner shall not, in any manner, be deemed or intended to have waived any right of subrogation which either it, or its insurance carrier may have against the Contractor, any subcontractor of any tier, or any of their employees, agents, officers or directors.

§ 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, Owner,~~ 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.~~Intentionally Deleted.

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

...

§ 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. Contractor shall furnish performance security for the Work. All contracts shall require a Performance and Labor and Material Bond written on A.I.A. Document A312 covering the faithful performance by the Contractor of the Work specified in accordance with plans and specifications and according to the time and terms and conditions of the contract, and also that the Contractor shall properly pay all debts incurred by him in the prosecution of the Work, including those for labor and materials furnished. The cost of each bond shall be included in the Contract Sum. The amount of the bonds shall be equal to one hundred percent (100%) of the Contract Sum. The Contractor shall include in bonds provisions, as well as guarantee faithful performance of the prevailing wage provisions of the contract. Bonds shall be written by surety approved by Owner with a minimum rating of A- in A.M. Best's Insurance Guide, current edition. The Company must also be licensed in the State of Illinois. Bonds shall be issued by a surety satisfactory to the Owner and shall name the Owner as a primary co-obligee.~~

#### PAGE 40

§11.4.3 ~~The Contractor shall deliver the required bonds to the Owner not later than three (3) days following the date the agreement is entered into, or if the Work is to be commenced prior thereto in response to a Letter of Intent, the Contractor shall, prior to the commencement of the Work, submit the evidence satisfactory to the Owner that such bonds will be furnished.~~

§11.4.4 ~~The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.~~

§11.4.5 All insurance coverage provided by insurance companies having policyholder ratings no lower than "A" and financial ratings no lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract.

#### §11.5 Additional Insured Requirements

§11.5.1 The Owner, and Architect and their officers, agents and employees shall be named as Additional Insureds on all insurance required to be acquired and maintained by the Contract Documents. All insurance required of the Contractor and all Subcontractors of any tier shall state that the coverage afforded to the Additional Insureds shall be primary insurance of the Additional Insureds with respect to claims arising out of operations performed by or on their behalf. If the Additional Insureds have other insurance which is applicable to the loss, it shall be on the excess or contingent basis.

§11.5.2 The Contractor shall require that every Subcontractor of any tier obtain insurance of the same character as the Contractor, naming the same Additional Insureds as the insurance required of the Contractor. Before the commencement of any Work by any Subcontractor of any tier, the Contractor shall obtain and furnish the Owner and the Owner's representative with Certificates of Insurance naming the Owner, the Owner's representative, and all of their officers, directors, commissioners, officials, employees, consultants, volunteers and agents, as Additional Insureds on the insurance required to be obtained by each Subcontractor of any tier. The Contractor shall also submit a certification, signed by each Subcontractor of any tier, with each Request for Payment, stating that all required insurance is in force for each and every respective Subcontractor of any tier. Failure to submit such a certification signed by all Subcontractors shall be grounds to withhold payment in full or in part.

§11.5.3 All insurance required of the Contractor and all Subcontractors of any tier shall provide that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, directors, commissioners, officials, employees, consultants, volunteers, or agents.

§11.5.4 All insurance required of the Contractor and all Subcontractors of any tier shall provide that the insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

§11.5.5 Under no circumstances shall the Owner be deemed to have waived any of the insurance requirements of this Contract by any action or omission, including, but not limited to:

- a. allowing any work to commence by the Contractor or any Subcontractor of any tier before receipt of Certificates of Insurance;
- b. failing to review any Certificates of Insurance received;
- c. failing to advise the Contractor or any Subcontractor of any tier that any Certificate of Insurance fails to contain all the required insurance provisions, or is otherwise deficient in any manner; or
- d. issuing any payment without receipt of a sworn certification from the Contractor and all Subcontractors of any tier stating that all the required insurance is in force.

The Contractor agrees that the obligation to provide the insurance required by the General Conditions as amended is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction, or omission by the Owner. Contractor shall also protect the Owner by specifically incorporating this Paragraph into each subcontract entered into and also requiring that every Subcontractor incorporate this Paragraph into each sub-subcontract it enters into.

§11.5.6 Nothing contained in the insurance requirements of the Contract Documents is to be construed as limiting the liability of the Contractor, the liability of any Subcontractor of any tier, or either of their respective insurance carriers. The Owner does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect the Owner, Contractor, or any Subcontractor's interest or liabilities, but are merely minimums. The obligation of the Contractor, and every Subcontractor of any tier to purchase insurance shall not, in

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any way, limit their obligations to the Owner in the event that the Owner should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of the loss which is not covered by either the Contractor's or any Subcontractor's insurance.

§11.5.7 The Contractor shall notify Owner, in writing, of any actual or possible claim for personal injury or property damage relating to the work, or of any occurrence which might give rise to such a claim, promptly upon obtaining first knowledge of same.

PAGE 41

~~§ 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.~~ Intentionally Deleted.

...

The Contractor shall promptly correct Work rejected by the Owner or 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 its consultant's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

~~§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it Work, the Contractor shall correct Work promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. so. The one year period for correction of the Work shall not waive any warranty rights of the Owner. 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.~~

...

~~§ 12.2.2.3 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. for that Work.~~

~~§ 12.2.3 The Contractor shall remove from the site 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.~~

PAGE 42

§ 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 obligations.

...

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.

State of Illinois. Any action brought with respect to the Contract shall be brought only in the Circuit Court of Du Page County, Illinois.

...

§ 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. Notwithstanding any of the provisions of this paragraph, however, the Owner may assign the Contract to an affiliated entity without the consent of the Contractor.

...

§ 13.4.2 No action or failure to act by the ~~Owner, Architect-Owner~~ 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.

...

§ 13.5.1 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 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. Contractor must schedule all tests, inspections or specific approvals required by law or the Contract Documents so as to avoid any delay in the Work.

#### PAGE 43

§ 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 or consultant's services and expenses shall be at the Contractor's expense.

...

#### § 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. Contractor shall account for all materials, equipment and labor entering into the Work and must keep such full and detailed records as may be necessary for proper financial management pursuant to the Contract Documents for a period of five (5) years after final payment. Furthermore, the Owner has the right to examine the Contractor's and its Subcontractors' and suppliers' records directly or indirectly pertaining~~

or relating to the Work or the Contract and the Contractor must grant the Owner access to and an opportunity to copy such records at all reasonable times during the Contract period and for five (5) years after final payment.

### § 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.

...

§ 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. has no right to stop Work as a consequence of non-payment. In the event of any disagreement between the Contractor and Owner involving the Contractor's entitlement to payment, the Contractor's only remedy is to file a Claim in accordance with Article 15. The Contractor must diligently proceed with the Work pending resolution of the Claim. If, however, an Application for Payment has been approved for payment by the Owner, and the Owner fails to make payment within sixty (60) days of the approval for payment by the Owner, the Contractor may upon ten (10) days written notice to the Owner, stop work if payment is not made by the Owner within ten (10) days following the notice.

...

§ 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: profit. The amount the Contractor is entitled to recover, pursuant to this paragraph shall be subject to the provisions of Section 7.5.

PAGE 44

§ 14.2.1 The Owner may terminate the Contract for cause if the Contractor/Contractor:

- .1 repeatedly refuses or fails to supply enough ~~Fails to supply adequate~~ properly skilled workers or proper materials;
- .2 ~~fails~~ Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Contractor and the ~~Subcontractors;~~ Subcontractors or Suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or Fails to comply with any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents. Fails to perform the Work in accordance with the Contract Documents or otherwise breaches any provision of the Contract Documents;

- .5 Anticipatorily breaches or repudiates the Contract;
- .6 Fails to make satisfactory progress in the prosecution of the Work required by the Contract or the Project Schedule; or
- .7 Endangers the performance of this Contract

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work. The Owner may terminate the Contract, in whole or in part, whenever the Owner determines that sufficient grounds for termination exist as provided in Subsection 14.2.1. The Owner will provide the Contractor with a written notice to cure the default. If the default is not cured within seven (7) days, the termination for default is effective on the date specified in the Owner's written notice, subject to any rights of the surety. However, if the Owner determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the Owner may terminate the Contract immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs incurred by the Owner to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification..

§ 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. Section 14.2.3 is amended in its entirety to read: Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 cease operations as directed by the Owner in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner, Contractor and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of any stored materials and equipment and completed Work;
- .3 unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and
- .4 except as directed by the Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts or purchase orders.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. less amounts which the Owner is entitled to offset from the unpaid Contract balance including actual or Liquidated Damages, exceeds the costs of completing the Work, including compensation for the Owner's and the Architect's or Consultant's services made necessary thereby, such excess will be paid to the Contractor or Surety, as directed by the Surety. If such costs exceed the unpaid Contract balance, the Contractor must pay the difference to the Owner upon written demand. This obligation for payment survives termination of the Contract

§ 14.2.5 If the Contractor files for protection, or a petition is filed against it, under the Bankruptcy laws, and Contractor wishes to affirm the Contract, Contractor shall immediately file with the Bankruptcy Court a motion to affirm the Contract and shall provide satisfactory evidence to Owner and to the Court of its ability to cure all present defaults and its ability to timely and successfully complete the Work. If Contractor does not make such an

immediate filing, Contractor agrees that Owner may petition the Bankruptcy Court to lift the Automatic Stay and agrees to permit Owner to terminate the Contract.

PAGE 45

§ 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 not include profit. No adjustment shall be made to the extent

...

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§14.3.3 Any adjustment made in the Contract Sum pursuant to paragraph 14.3.2 shall be subject to the provisions of paragraphs 7.3.6.1 through 7.3.6.5. Overhead shall be allowed to the extent of one-half (1/2) the percentage given in paragraph 7.5.

...

§ 14.4.1 The Owner may, at any time, terminate the ~~Contract~~Contract, in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this paragraph shall be by a Notice of Termination delivered to the Contractor specifying the extent of termination and the effective date.

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

- .1 ease~~Cease~~ operations as directed by the Owner ~~in the notice;~~in the notice and, if required by the Owner, participate in an inspection of the Work with the Owner, Contractor, and the Architect to record the extent of completion thereof, to identify the Work remaining to be completed or corrected, and to determine what temporary facilities, tools, equipment and construction machinery are to remain at the Site pending completion of the Work;
- .2 Complete or correct the items directed by the Owner, and take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and any stored materials and equipment and completed Work;
- .3 ~~except for Work directed to be performed prior to the effective date of termination stated in the notice, Unless otherwise directed by the Owner, remove its tools, equipment and construction machinery from the Site, and~~
- .4 Except as directed by the Owner, terminate all existing subcontracts and purchase orders related to the Work and enter into no further subcontracts and or 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, will be entitled to compensation only for the following items:~~

- .1 Payment for acceptable Work performed up to the date of termination;
- .2 The costs of preservation and protection of the Work if requested to do so by the Owner;
- .3 The cost of purchased materials but only if not returnable and provided to the Owner, or the restocking or return charge, if any, if returnable at the Owner's written election;
- .4 Overhead and profit on the foregoing not to exceed ten (10%) percent.

The Contractor will not be compensated for the cost of terminating subcontracts, which must be terminable at no cost to the Owner if the Contract is terminated. The Contractor will not be compensated for the cost of any idled employees. The Contractor is not entitled to any other costs or compensation (including lost or expected profit, uncompensated overhead or related expenses, or the cost of preparing and documenting its compensable expenses under this Subsection 14.4.3 as a consequence of the Owner's termination of the Contract for convenience. The Contractor conclusively and irrevocably waives its right to any other compensation or damages (compensatory or punitive) arising from termination of the Contract. If the Owner and the Contractor are unable to agree upon the amounts specified in this subsection, the Contractor may submit a Claim as provided in Article 15. The Claim must be limited to resolution of the amounts specified in Subsections 14.4.3.1, 14.4.3.2, 14.4.3.3 and 14.4.3.4 of this

Subsection 14.4.4. No other cost, damages or expenses may be claimed or paid to the Contractor or considered as part of the Claim, the same being hereby conclusively and irrevocably waived by the Contractor. Any such Claim must be delivered to the Owner within thirty (30) days of the termination of the Contract and must contain a written statement setting forth the specific reasons and supporting calculations and documentation as to the amounts the Contractor claims to be entitled to under this Subsection as a result of the termination of the Contract

#### **ARTICLE 15 — CLAIMS AND DISPUTES**

§14.4.4 Allowances shall be made for payment previously made to the Contractor for the terminated portion of the Work, and claims which the Owner has against the Contractor under the Contract, and for the value of materials, supplies, equipment or other items that are part of the cost of the Work to be disposed of by the Contractor.

§14.4.5 The Contractor's obligations surviving final payment under the Contract, including without limitation those with respect to insurance, indemnification, and correction of Work that has been completed at the time of termination, remains effective notwithstanding termination for convenience of the Owner.**ARTICLE 15 CLAIMS AND DISPUTES**

PAGE 46

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

...

**Time Limits on Claims.** Claims by either the Owner or Contractor party 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 must be initiated within 21 within 7 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, whether or not any impact in money or time has then been determined. Claims must be initiated by written notice to the Architect and the other party. Failure to comply with the literal language of this provision shall deprive any court of jurisdiction to consider Contractor's claim.

As a condition to making a claim for additional costs, the Contractor shall maintain and produce accurate records to substantiate all additional costs actually incurred.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

**Continuing Contract Performance.** Pending final resolution of a Claim, 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. **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the Site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 7 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if 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 so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made

within seven (7) days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4. The Site conditions contemplated by this Subparagraph include, but are not limited to, materials containing asbestos, polychlorinated biphenyl (PCB), or hazardous materials.

**§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**Claims for Additional Cost. If the Contractor wishes to make 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.

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

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 15.1.

**§ 15.1.7** Articles 15.1.5 and 15.1.6 are not intended to, and shall not, create any additional grounds upon which the Contractor shall be entitled to an increase in the Contract Sum beyond those grounds provided elsewhere in this Contract. Also, in no event shall the Contractor make a claim for additional costs resulting from any delays in the Progress of the Work.

#### **§ 15.1.8 Claims for Additional Time**

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

**§ 15.1.8.2** 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.

**§ 15.1.9 Injury or Damage to Person or Property.** If either party to the Contract 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.

§ 15.1.10 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.

§ 15.1.10.1 The Contractor agrees to waive any right which it may have to punitive damages from the Owner and agrees not to make any claim or demand for punitive damages against the Owner.

## **§ 15.2 INITIAL DECISION RESOLUTION OF CLAIMS AND DISPUTES**

§ 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 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to ~~mediation of any Claim mediation~~, or litigation of all Claims between the Contractor and Owner 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 Architect with no decision having been rendered by the Architect. The Architect 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.

§ 15.2.2 The Architect will review Claims and within ten days of the receipt of the 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 Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 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. If the Architect 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 provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

§15.2.6 A decision by the Initial Decision Maker shall not constitute a waiver by either party to have a claim resolved through judicial decision as provided herein.

§ 15.2.7 In the event of a Claim against the Contractor, Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### PAGE 48

~~§ 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. disputes or other matters arising out of or relating to the Contract, except those expressly waived herein, may be subjected to mediation by agreement of the parties.~~

§ 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. 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.

§ 15.3.3 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. 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.

#### **§ 15.4 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.

§ 15.3.4 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.

§ 15.4.2 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.

§ 15.3.5 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.

§ 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.

§ 15.3.6 A decision by the Initial Decision Maker shall not constitute a waiver by either party to have a claim resolved through judicial decision.

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

§ 15.3.6.1 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.

§ 15.4.4.1 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).

§ 15.3.7 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.

§ 15.4.4.2 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.

§ 15.3.8 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.

### §16.1 EQUAL OPPORTUNITY

§16.1.1 The Contractor shall maintain policies of employment as follows: The Contractor and all subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin or age. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, sex, national origin or age. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the policies of non-discrimination.

§16.1.2 The Contractor and all subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age. Contractor shall also and in addition to the provision set out in this Article 16, remain in compliance with Illinois Public Works Employment Discrimination Act (775 ILCS 10/1 *et seq.*) and the Illinois Human Rights Act Article IL Employment (775 ILCS 5/2-101 *et seq.*)

§16.1.3 All Contract for Work herein are subject to the provisions of the Equal Employment Opportunity Clause of the Illinois Fair Employment Practices Commission.

### §17.1 SEXUAL HARASSMENT POLICY

§17.1.1 Pursuant to Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/1-101 *et seq.*) ("Rights Act"), all Contractors and subcontractors must have in force and effect a written sexual harassment policy which includes at a minimum the following provisions:

- .1 a statement of illegality of sexual harassment;
- .2 the definition of sexual harassment under Illinois law;
- .3 a description of sexual harassment utilizing examples;
- .4 an internal complain process, including penalties;
- .5 the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights ("Department") and the Illinois Human Rights Commission ("Commission");
- .6 directions on how to contact the Department and the Commission; and
- .7 protection against retaliation as provided by Section 6-101 of the Rights Act.

The Contractor understands, represents and warrants to the Owner that Contractor and its subcontractors (for which the Contractor takes responsibility to ensure that they comply with the Rights Act) are in compliance with Section 2-105 of the Rights Act and will remain in compliance with Section 2-105 of the Rights Act for the entirety of the Work. A violation of Section 2-105 is cause for the immediate cancellation of this contract. However, any forbearance or delay by the Owner in canceling this contract shall not be construed as, and does not constitute, Owner's consent to such violation and a waiver of any rights the Owner may have, including without limitation, cancellation of this contract.

### §18.1 PREVAILING RATE OF WAGE

§18.1.1 All Contracts for Work herein are subject to the provisions of Chapter 48, Section 39s-1 through 39s-12, Illinois Revised Statutes, providing for the payment of the prevailing rate of wage to all laborers, workmen and mechanics engaged on the Work. The Contractor shall be solely responsible for maintaining accurate records as required by statute, and shall be solely liable for paying the difference between prevailing wages and wages received

as indicated in Section 29s-11.

§18.1.2 If, during the course of work under the contract, the Department of Labor revised the prevailing rate of hourly wages for any trade or occupations, the Contractors shall have the sole responsibility and duty to ensure that the revised prevailing rate of hourly wages is paid by the Contractors to each worker to whom a revised rate is applicable. Revisions of the prevailing wages as set forth above shall not result in an increase in the contract sum. A copy of the Owner's prevailing wage determination is attached hereto as PWR-1 through PWR-3.

§18.1.3 This Contract is subject to and governed by the rules and regulations of the Illinois Human Rights Act.

§18.1.4 The Contractors, agents, and employees shall comply with the terms and provisions of the Wages of Employees on Public Works Act regarding the policy of the State of Illinois pertaining to the payment of the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed.

§18.1.5 The Contractors indicate that by executing the contract, he/she certifies that he/she is not barred from bidding on the contract as a result from bid rigging or bid rotation under Article 33E of the Criminal Code of 1961.

~~§ 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 its associated Additions and Deletions Report and this certification at 17:32:26 on 04/28/2016 under Order No. 2249864546\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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

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

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

# DRAFT AIA® Document A133™ – 2009

**Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the «  » day of «August» in the year «2016»  
(In words, indicate day, month and year.)

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

«Village of Carol Stream →«→  
«500 N. Gary Avenue  
«Carol Stream, Il. 60188 »

and the Construction Manager:  
(Name, legal status and address)

«MTI Construction Services »«  
«328 Eisenhower Lane N  
«Lombard, Illinois 60148 »

for the following Project:  
(Name and address or location)

«Village Hall and Police Addition and Remodeling →  
«→

The Owner's program for the Project is as provided in the Village Hall and Police Facility Planning Study, Williams Architects Project 2014:064, Option 2:

Space Programs as developed by Williams Architects during the planning study and approved by the Village:

<u>Village Hall Total Area:</u>	<u>24,930 SF</u>
<u>Police Total Area:</u>	<u>29,800 SF</u>
<u>Combined Total Area:</u>	<u>54,730 SF</u>

Total Project Budget is in the range of \$13,100,000 to \$15,650,000.

The Architect:  
(Name, legal status and address)

«Williams Architects →«→  
«500 Park Boulevard, Suite 800  
«Itasca, Illinois 60143 →

The Owner's Designated Representative:  
(Name, address and other information)

«Bob Mellor »  
«Assistant Village Manager →  
«500 N. Gary Avenue »  
«Carol Stream, Illinois 60188 »  
«   »

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. Original *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

~~364422 3ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this~~

« »

The Construction Manager's Designated Representative:  
(Name, address and other information)

« Andy Jones »  
« President Project Manager »  
« 328 Eisenhower Lane N »  
« Lombard, Illinois 60148 »  
« »  
« »

The Architect's Designated Representative:  
(Name, address and other information)

« Mark S. Bushhouse, AIA, LEED AP »  
« President / Managing Principal »  
« Role: Principal in Charge »

« Scott E. Lange, AIA, LEED AP »  
« Vice President / Principal »  
« Role: Project Manager »

Andrew Caputo, AIA, LEED AP  
Associate Principal  
Project Architect

The Owner and Construction Manager agree as follows.

## TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 3 OWNER'S RESPONSIBILITIES
- 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 6 COST OF THE WORK FOR CONSTRUCTION PHASE
- 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 8 INSURANCE AND BONDS
- 9 DISPUTE RESOLUTION
- 10 TERMINATION OR SUSPENSION
- 11 REGULATORY REQUIREMENTS AND CERTIFICATION
- 12 MISCELLANEOUS PROVISIONS
- 13 SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B MODIFIED AIA A201-2007 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

#### ARTICLE 1 GENERAL PROVISIONS

##### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions of the Contract (~~General, Supplementary and other Conditions~~), Drawings, Project Manual, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. References to "General Conditions" or "General Conditions of the Contract" in this document shall mean the Modified AIA A201-2007 General Conditions of Contract for Construction, a copy of which is attached hereto as Exhibit B. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.1.1 The Contract Documents shall not be construed to create a contractual relationship between the Owner and any subcontractor or any third party, or between any persons or entities other than the Owner and Construction Manager. The Owner shall, however, be considered an intended beneficiary of the performance of any contractor's, subcontractor's, consultant's or other third party hired by the Construction Manager for this Project.

##### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and

covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager shall perform its services with the standard of care for Construction Managers at Risk experienced in the construction management of similar projects in size and scope. Construction Manager shall be responsible for services provided hereunder whether such services are provided directly by Construction Manager or by persons or entities hired by Construction Manager. The Construction Manager will perform duties and services and make decisions called for hereunder promptly and without unreasonable delay and will give the Project such priority as is necessary to cause the Construction Manager services hereunder to be properly performed in a timely manner and consistent with sound professional practices. The Construction Manager represents and warrants that its employees have the requisite skill and expertise to perform the services required by this Contract.

**§ 1.2.1 The Construction Manager's Project Team consists of the following key personnel:**

Andy Jones, Project Manager  
Jeff Bockhop, Project Executive  
Mike Oehlberg, Project Superintendent

The Owner selected the Construction Manager, in part, because of the collective experience and talent of the Project Team proposed to the Owner. The Construction Manager agrees that it will make no change in the Project Team as set forth above except as otherwise requested or approved by the Owner or as may result from personnel leaving employment or other circumstances beyond the reasonable control of the Construction Manager. Should circumstances beyond the reasonable control of the Construction Manager result in changes to the Project Team, the Construction Manager shall submit the credentials of the proposed replacement member for the Owner's approval.

**§ 1.3 General Conditions**

For the Preconstruction Phase, the Modified AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in the Modified A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in Modified A201-2007 shall mean the Construction Manager. The term "Contract Sum" shall mean the agreed upon Guaranteed Maximum Price ("GMP").

**ARTICLE 2 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES AND RESPONSIBILITIES**

The Construction Manager's Basic Services consist of those described in this Article 2 and include usual and customary preconstruction coordination and scheduling, constructability review, cost estimating, construction coordinating and scheduling, and allocation of construction activities, and other duties of the Construction Manager described herein. Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Construction Manager shall e the Cost Consultant for the Project. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager shall not engage in any activity or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager's judgment or responsibility with respect to this Project.

**§ 2.1 Preconstruction Phase**

**§ 2.1.1** The Construction Manager shall review the program furnished by the Owner and shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

**§ 2.1.2 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall coordinate its services with those services provided by the Owner and the Architect. The Construction Manager shall expeditiously review design documents during their development and The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems

and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, phasing of construction and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

#### § 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

#### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall meet with and consult with the Owner and Architect and consult with respect to the estimated Cost of the Work. The Construction Manager shall make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 2.1.5.4 The Construction Manager shall perform Value Engineering by advising and recommending alternative selection of materials, equipment, construction and other factors related to cost. In conjunction therewith, the Construction Manager shall review the Drawings and Specifications as they are being prepared recommending alternative solutions with respect to design impact and feasibility or scheduling. In providing recommendations, the Construction Manager shall not assume any of the Architect's responsibilities for design.

§ 2.1.5.5 The Construction Managers evaluations of the Owner's budget and Cost of the Work and the Construction Manager's services as the Cost Consultant represent the Construction Manager's judgment as a construction professional.

#### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall pre-qualify all subcontractors. The selection of subcontractors shall be made through the bid process as required by local ordinances and state law. The Construction Manager shall consult with the Owner and Architect regarding pre-

qualification criteria for subcontractors. The Construction Manager shall establish bidding schedules and furnish to the Owner and Architect a list of prospective subcontractors, for each trade or bid package, including suppliers who are to furnish materials or equipment fabricated to a special design. The Construction Manager shall endeavor to identify and solicit bids from reputable, financially sound pre-qualified firms with an established record of successful performance in their respective trades. The Construction Manager shall conduct an analysis of the lowest qualified bidders and shall consult with the Owner making recommendations with respect to the subcontractors to be selected. The Construction Manager shall not contract with any such proposed subcontractor that Owner and Architect have reasonably rejected.

§ 2.1.6.1 Construction Manager shall assign responsibilities for safety precautions and programs, and temporary Project facilities. Construction Manager shall verify that such assignments of responsibilities are included in the proposed Contract Documents, and shall advise Owner and Architect of any recognized omissions and/or deficiencies therein in writing.

§ 2.1.6.2 Construction Manager shall advise Owner and Architect on the separation of the Project into Subcontracts for various categories of Work. Without assuming design responsibility or responsibility for coordinating the various design elements, Construction Manager shall review the Drawings and Specifications and make recommendations as necessary to provide that (1) the Work activities of the separate Subcontractors is coordinated, (2) all express requirements for the Project (and those reasonably inferable from the express requirements) have been assigned to the appropriate Subcontractor, (3) the likelihood of jurisdictional disputes has been minimized, and (4) proper coordination of activities has been provided for construction.

§ 2.1.6.3 Construction Manager shall prepare subcontracts (“Subcontracts”) and Construction Manager shall consult with Owner on the acceptability of trade Subcontractors and trade Sub-Subcontractors proposed by the Subcontractors.

§ 2.1.7 The Construction Manager shall prepare, for the Architect’s review and the Owner’s acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in its professional judgment in preparing schedules and estimates. ~~The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. Should the Owner incur charges for additional Architect’s services as a result of errors with respect to the Construction Manager’s cost estimates, such charges shall be the responsibility of the Construction Manager.~~ The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, unless the Construction Manager recognizes or (within construction industry standards) reasonably should have recognized any such variance. ~~but~~ The Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### § 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents. The Construction Manager shall cause this provision to be inserted into all subcontracts, so that such provision is binding upon every subcontractor.

## § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 ~~At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, When the Drawings and Specifications are sufficiently complete~~, the Construction Manager shall competitively bid the Work, evaluate, in consultation with the Owner and Architect the most responsive and responsible bidders and prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. The Guaranteed Maximum Price proposal shall clearly itemize the cost of each anticipated component of the Work and shall not include any other project expenses that are not directly involved in the scope of construction included in this Agreement, such as professional design fees, site survey, financing costs, or other contract costs for contracts directly with the Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. The Construction Manager shall identify in its Guaranteed Maximum Price proposal those areas where further design development is anticipated and the construction cost values assigned to such further design development.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A complete list of all the Drawings and Specifications, including all Addenda thereto, and the Modified Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications including pricing;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by Construction Specifications Institute (CSI), trade categories or systems, allowances, contingency, and the Construction Manager's Fee. The proposed Guaranteed Maximum Price shall be consistent with the approved Project Budget, shall be based upon rates for labor, materials and equipment prescribed by the Owner, and shall be the maximum amount the Owner shall be required to pay the Construction Manager for the Cost of the Work (which shall include all compensation and expenses payable to the Construction Manager);
- .4 The detailed critical path method schedule in accordance with Paragraph 3.10 of the Modified General Conditions, including the anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price. The date for acceptance provided for in the Guaranteed Maximum Price proposal must reflect a reasonable period of time for the Owner to review the Guaranteed Maximum Price proposal.
- .6 Alternatives approved by the Owner, including proposed adjustments in the Guaranteed Maximum Price and Project Schedule if the Owner elects to accept the Schedule;
- .7 A list of Unit Prices and assumptions about anticipated unit quantities; and
- .8 A list of long lead time items.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information included in the GMP proposal or between that information and the Plans and Specifications presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed

Maximum Price proposal, its basis, or both to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the satisfaction of the Owner.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

~~§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. Owner is a tax exempt entity under the laws of the State of Illinois. Owner shall, as part of its undertakings under this Agreement, provide to the Construction Manager all certificates of exemptions and tax exempt numbers needed to entitle Construction Manager/Contractor and Subcontractors to purchase materials and other items to be used on the work or incorporated into the work on a tax exempt basis, said exemption specifically to include but not be limited to the "Illinois Retailer Occupation Tax" (Sales Tax). Construction Manager shall provide such certificates to the subcontractors.~~

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of Modified A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase. The Contract Time shall be measured from the date of commencement.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 The Construction Manager shall establish and timely submit for Owner review:

- .1 Project cost control measures;
- .2 Project reporting procedures;
- .3 Project Manual updates;
- .4 Quality Management Program; and
- .5 Staffing Plan for Construction period.

### § 2.3.2 Administration

§ 2.3.2.1 ~~Those~~All portions of the Work ~~that the Construction Manager does not customarily perform with the Construction Manager's own personnel~~ shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. All contracts shall provide that the Subcontractor shall comply with the provisions of the Illinois Prevailing Wage Act, 820 ILCS 30/01 et seq. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and Owner. Owner's Representative or its successor shall have the right to be present during the bid opening and to review the bids received and opened. The Owner shall then determine, with

the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect not later than one week after the meeting, for review and approval of the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of Modified A201–2007, which construction and submittal schedules shall be consistent with the Guaranteed Maximum Price proposal accepted by the Owner and shall include the Owner’s occupancy requirements.

§ 2.3.2.6.1 The Construction Manager shall update the Project Construction Schedule with current activities of Subcontractors on the Project, including processing of Shop Drawings and similar required submittals and delivery of products requiring long lead time procurement. Construction Manager shall include the Project occupancy requirements showing portions of the Project having occupancy priority, if any are established with the Owner. Construction Manager shall update and reissue the Project Construction Schedule monthly to show current conditions and revisions required by actual experience. Submission of such updated schedules shall be a condition to Owner’s payment of monthly Applications for Payment. Construction Manager shall maintain the progress of all Work in accordance with the approved Project Construction Schedule, and to ensure all work meets the approved plans and specifications for the Project.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.3.2.9 The Construction Manager shall provide administrative, management and related services as required to

coordinate the Work of Subcontractors with each other and with the activities and responsibilities of Owner, Architect, and Consultants, where applicable, and to complete the Project in accordance with the Contract Documents. The Construction Manager shall supervise and coordinate with the Village all aspects of the Project with all authorities, governmental agencies and utility companies who may be involved in the Project. The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement. The Construction Manager shall take all reasonable steps necessary to enforce agreements with Subcontractors for the benefit of Owner.

**§2.3.2.10** Construction Manager shall maintain exclusively for the Project a competent full time staff at the Project Site to coordinate and direct the Work and the progress of all subcontractors. All of the Construction Manager's supervisory personnel shall not be removed or replaced without the Owner's consent, which will not be unreasonable withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of any additional compensation for the replacement. Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The Construction Manager shall identify an on-site member

**§ 2.3.2.11** The Construction Manager shall prepare a construction staging plan setting forth construction scheduling, lay down areas and storage, trailer areas, trailer locations, priorities as to site use, ingress/egress and other similar site logistic matters for the Project. The Construction Manager shall consult with the Owner and Architect and provide assistance determining the cost effectiveness of staging construction in one or two stages, including cost estimates for construction in one or two stages.

**§2.3.2.12** Construction Manager shall be fully responsible for and shall obtain satisfactory performance from each of the Subcontractors against the Project schedule, and the each of its Subcontractor's timely performance and compliance with the Drawings and Specifications. Construction Manager shall consult with Owner regarding available courses of action when material requirements of a Subcontract are not being fulfilled and the non-performing party will not take satisfactory corrective action that is satisfactory to the Construction Manager.

**§ 2.3.2.13** Construction Manager shall maintain, revise and issue monthly Cost vs. Budget Reports, which shall set forth actual and projected costs for the Project. Construction Manager shall incorporate approved changes to the Work as they occur and shall develop cash flow reports and forecasts as needed by Owner or Architect. Construction Manager shall submit to Owner a form of Anticipated Cost Report for use on the Project for Owner's review, comment and acceptance. Upon acceptance by Owner, the form of Cost vs. Budget Report shall establish the standard for detail required for the remainder of the Project.

**§ 2.3.2.14** The Anticipated Cost Report will show actual costs for completed activities and estimates for uncompleted tasks and will identify variances between actual and budgeted or estimated costs. Construction Manager shall advise Owner and Architect whenever projected costs exceed budgets or estimates and provide cost saving measures to negate budget deficits.

**§ 2.3.2.15** Construction Manager shall be responsible for all construction operations performed by its subcontractors and those employed by subcontractors. Construction Manager shall supervise the Work of all subcontractors, providing instructions to each when its Work does not conform to the requirements of the plans and specifications and manage each subcontractor to ensure that corrections are made in a timely manner so as not to affect the progress of the Work. Construction Manager shall coordinate the safety programs for the Project. Except as to means, methods and processes directed by the Owner, Construction Manager shall be solely responsible to Owner for the adequacy of all construction means, methods, techniques and procedures employed by Construction Manager or its Subcontractors in the performance of the Work, and for coordinating all portions of the Work to be performed.

**§ 2.3.2.16** Construction Manager shall provide information so that the Owner may apply for and obtain all necessary and required building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various Subcontractors. Owner shall timely provide all record drawings, specifications and other information required to obtain such permits. With respect to permits that Subcontractors are required to obtain, Construction Manager shall require all such Subcontractors to obtain those permits before they commence their work. Construction Manager shall verify that applicable fees and assessments for all permits have been paid.

Construction Manager shall obtain, with Owner's assistance, approval from authorities having jurisdiction over the Project, including but not limited to a Certificate of Occupancy after having achieved Substantial Completion.

§ 2.3.2.17 Construction Manager shall immediately notify Owner and Architect in writing of any inaccuracies of which Construction Manager may become aware in any surveys or other documentation describing the physical characteristics, legal limitations, and utility locations for the Project Site.

§ 2.3.2.18 Construction Manager shall assist Owner in selecting and retaining the professional services of surveyors, special consultants and testing laboratories. Construction Manager shall supervise and coordinate its services with those provided by Owner's Architect and other Consultants.

§ 2.3.2.19 Construction Manager shall develop and establish, for Owner's benefit, a quality assurance control system in order that the standards of construction called for, specified, or drawn are met. Construction Manager shall confirm that mechanical, electrical, plumbing and fire protection systems are adequately tested and balanced prior to their acceptance. Construction Manager shall coordinate all testing provided by others as required by the technical sections of the Specifications and/or required by governing bodies charged with inspecting the Work for compliance with applicable building codes, and/or as required by applicable building codes and shall warrant that all such Work shall comply with the Drawings and Specifications for the Project. Construction Manager shall keep an accurate record of all tests, inspections conducted, findings, and test reports, and shall make them available to the Owner and Architect for review and copying.

§ 2.3.2.20 Construction Manager shall perform the Work in accordance with the requirements of the Contract Documents and shall assure that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents. Construction Manager shall endeavor to protect Owner against defects and deficiencies in the Work, shall warrant the Work is free from all defects and deficiencies and shall correct at its expense all defects and deficiencies. As appropriate, Construction Manager shall require special inspection or testing, and make recommendations to Architect regarding special inspection or testing of Work.

§ 2.3.2.21 Construction Manager shall receive from each Subcontractor, review for conformance with the Contract Documents, approve or reject for re-review and submit to Architect all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals. Without assuming any of Architect's responsibility for Shop Drawing review, Construction Manager shall stamp all Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, in order to verify Construction Manager's review thereof, which stamp shall constitute a representation by Construction Manager to Owner that the submitted item conforms with the Contract Documents and is coordinated with other shop drawings. Construction Manager shall transmit all submittals to Architect for Architect's approval, and where applicable to Consultants for their approval. In collaboration with Architect, and where applicable with Consultants, Construction Manager shall establish and implement procedures for expediting the processing of Shop Drawings, Product Data, Samples, As-Built Drawings and other submittals, and shall assure that the approved Project Construction Schedule shall include acceptable dates for the preparation, submission, processing and review of Shop Drawings and other required submittals. Architect's review of submittals, or where applicable review by Consultants, by Construction Manager or by any Subcontractor shall be limited to review of an initial submittal and two (2) re-submittals for conformance with the design concepts expressed in the Contract Documents. Construction Manager shall pay (without reimbursement from Owner) for any costs and expenses incurred in connection with additional re-submittals, including, without limitation, compensating Architect and where applicable Consultants for additional services rendered in connection with reviewing such "extra" re-submittals, and agrees Owner may deduct such payment from the next monthly payment(s), when the re-submittals in excess of the allotted two reviews is caused by the Construction Manager, Subcontractor, and/or Sub-Subcontractor's error.

§ 2.3.2.22 Construction Manager shall maintain at the Project Site, on a current basis: A record copy of all Drawings, Specifications and Addenda in good order and marked to record all changes made during construction; Change Order Logs and other Modifications; Shop Drawing Logs; Shop Drawings; Product Data; Samples; As-Built Drawings; submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Work. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. In coordination with the Architect, the Construction manager shall establish and implement procedures for the tracking and expediting the processing of shop drawings and samples, as

required by the Modified General Conditions of the Contract. The As-Built Drawings shall be prepared by using electronic documentation as agreed to by Owner, Architect and Construction Manager.

§ 2.3.2.23 Construction Manager shall arrange for delivery and storage, protection and security for Subcontractor furnished/installed and Owner-furnished/contractor-installed materials, systems and equipment which are a part of the Project until such items are satisfactorily incorporated into the Project.

§ 2.3.2.24 Construction Manager shall develop and implement a system for the preparation, review and processing of change orders. Without assuming any of the Architect's responsibilities for design, the Construction Manager shall recommend necessary changes to the Owner and Architect, and shall review requests for changes and submit recommendations to the Owner and Architect.

#### § 2.4 Professional Services

Section 3.12.10 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of the Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 OWNER'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including the Village Hall and Police Facility Planning Study, Williams Architects Project 2014:64, Option 2. ~~a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.~~

#### § 3.1.2 ~~DELETED~~

~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager 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 Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager 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 Construction Manager and Architect.~~

#### § 3.1.3 ~~DELETED~~

~~The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.~~

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish any the following information or services prepared by the Architect's consultants or the Owner's consultants with respect to the Project. with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. To the extent that the information was generated by or prepared for the Owner, as opposed to prepared for an independent third party or government agency, and except to the extent that the Construction Manager knows or reasonably should have known of any inaccuracy, ~~the~~ Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties ~~with respect to the Project Site, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.~~

§ 3.1.4.2 ~~DELETED~~

~~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 surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.~~

§ 3.1.4.3 ~~DELETED~~

~~The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.~~

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify ~~has designated~~ a representative identified in this Agreement authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of Modified A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing ~~services, that services that~~ may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall ~~has~~ retained an Architect to provide services, duties and responsibilities as described in Modified AIA Document B1033™-201407, Standard Form of Agreement Between between Owner and Architect for a Large or Complex Project, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

~~«-»~~: A fixed fee in the amount of \$ Forty thousand (\$40,000.00) dollars . The Construction Manager shall include the stipulated fixed fee for the Preconstruction Phase services in the Guaranteed Maximum Price.

~~§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «-» («-») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. The Construction Manager shall accept~~

compensation under Section 4.1.2 as payment or all services rendered and reimbursable expenses incurred during the Preconstruction Phase.

**§ 4.1.4 DELETED**

~~Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments shall be made in accordance with the Illinois Local Government Prompt Payment Act, are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « » ( « » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

« » % « »

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

**§ 5.1.1** The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

~~« As set forth in the Construction Manager's fee proposal attached hereto as Exhibit C. »~~

**§ 5.1.2** The method of adjustment of the Construction Manager's Fee for changes in the Work:

~~« Ten (10%) per cent of the change order request »~~

**§ 5.1.3** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

~~« Ten (10%) per cent »~~

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed « » percent ( « » %) of the standard rate paid at the place of the Project.

**§ 5.1.5** Unit prices, if any:

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

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

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. If the Contract Sum is less than the Guaranteed Maximum Price, the Owner shall retain 100% of the difference.

*(Insert specific provisions if the Construction Manager is to participate in any savings.)*

**§5.2.1.1** The Guaranteed Maximum Price and the schedule of values shall include a line item designated as “Construction Manager’s Contingency” in the sum of Ten (10% per cent of the presently estimated Cost of the Work, (which is approximately five percent for design and five percent for construction), which shall be for the sole and exclusive use of the Construction Manager. The Construction Manager’s in its sole discretion and upon notice to the Owner (as part of the monthly payment application) may transfer funds from the contingency line item to cover cost overruns in any other line item, except fee. The Construction Manager’s may also transfer funds to a newly created line item in Construction Manager’s sole discretion to properly account for gaps in categories of work being performed and not included in the scope of work of existing subcontracts. Such transfers shall represent additional costs incurred for the Owner’s benefit and may include but not be limited to the following examples:

- a. costs incurred due to excusable delays but not reimbursed by Change Order;
- b. costs due to latent physical conditions which arguably could not be seen but are not accepted as concealed conditions;
- c. costs of the Work not included in the GMP budget or in existing subcontracts but arguably inferable from the construction documents;
- d. costs of completing the work of a defaulted or bankrupt Subcontractor in excess of the subcontract price;
- e. net premium time or multiple shift or weekend time not provided for in the contract or Change Orders and not due to unexcused delays of Construction Manager or its Subcontractors;
- f. costs under the deductible expenses for Builder’s Risk Insurance;
- g. costs incurred due to scope errors;
- h. costs resulting from unanticipated construction disturbances such as strikes, accidents or breakdowns;
- i. Costs due to errors and omissions in the CM’s bidding and scoping processes;
- j. costs attributable to reasonable schedule recovery
- k. costs incurred due to contractor’s estimating inaccuracies; and
- l. costs resulting from unanticipated price or interest rate increases.

The Contingency shall not be used to fund scope increases, design errors or omissions and other costs that are the responsibility of the Owner.

**§ 5.2.2** The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of Modified AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of Modified AIA Document A201–2007, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of Modified AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of Modified AIA Document A201–2007 shall have the meanings assigned to them in Modified AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of Modified AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

**§5.3.5 DELETED**

~~§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

**ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

**§ 6.1 Costs to Be Reimbursed**

§ 6.1.1 The term Cost of the Work shall mean the total cost to the Owner to construct all elements of the Project, including any change in the Scope of the Project approved by the Owner, and as designed or specified by the Architect and shall include the costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those stated in the Guaranteed Maximum Price, the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

**§ 6.2 Labor Costs**

§ 6.2.1 To the extent authorized by the Owner, wWages of ~~construction~~ workers directly employed by the Construction Manager to perform the ~~construction of the~~ Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for ~~taxes~~, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner’s prior approval.

**§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 6.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 ~~Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.~~

§ 6.5.5 ~~That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.~~

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

#### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 6.6.2 ~~Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of Modified AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; ~~the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 ~~LEGAL~~ Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 ~~DELETED~~ Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of Modified AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of Modified AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract, including, but not limited to defective or nonconforming Work, disposal of materials and equipment wrongfully supplied, or making good on any damaged to property;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Legal costs, mediation costs, or costs associated with FOIA request compliance however incurred.
- .10 Amounts the Contract Documents specifically require the Construction Manager to pay, include deductible amounts payable by the Construction Manager under any policy of insurance.
- .11. Costs resulting from theft or vandalism of items that are not part of the Work.
- .12. Drug testing for employees, incentive or bonus programs (including safety) accounting and EEO and targeted business compliance staff, safety training or seminars.
- .13. Equipment repair, maintenance or re-calibration costs.
- .14. Off site file storage.
- .15. Management of warranty work.

16. Except as provided in Section 6.1.1, any cost not specifically and expressly described in Section 6.1.  
17. Costs which this Agreement provides that the Construction Manager shall pay or incur or for which this Agreement expressly provides the Construction Manager shall be responsible.

### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. Such records shall be kept on the basis of generally accepted accounting principles and in accordance with the Contract Documents. The Owner and the Owner’s auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect and reviewed and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. The Construction Manager, in cooperation with the Architect, shall provide with each Application for Payment, a properly completed Affidavit setting forth, under oath, the name and address and amount due to each subcontractor, materialman, or other appropriate party included in that payment. For every party listed to be paid, the Construction Manager shall provide a full or partial waiver of lien, as appropriate. The Construction Manager shall also provide a partial or full waiver of lien for his services. Payment Certificates will be issued in accordance with Section 9.4.3 of AIA Document A201–2007, Modified General Conditions of the Contract.

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

« »

§ 7.1.3 ~~Payments shall be made pursuant to the Illinois Local Government Prompt Payment Act after receipt by the Owner of the Construction Manager's invoice for the construction draw based upon the percentage of completion applied against the Construction Price, properly prepared and approved by the Architect and Owner. The Owner shall pay to the Construction Manager the amount approved, less retainage when applicable, unless there is a dispute about the amount of the compensation due the Construction Manager, in which case the Owner shall pay the undisputed amount. The date on which payment is made shall be known as the "Payment Date". Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « » ( « » ) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.)~~

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values, ~~in the format approved by the Owner, Architect and Construction Manager,~~ submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect/Owner~~ may require. This schedule, unless objected to by the Architect ~~or Owner~~, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- 1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of Modified AIA Document A201-2007;
- 2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 Add the Construction Manager's Fee, less retainage of «ten» percent ( «10» %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of «ten» percent («10» %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the ~~Architect~~ Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of Modified AIA Document A201-2007.

§ 7.1.8 Notwithstanding anything to the contrary in this Agreement and to the fullest extent allowed by Illinois Law, Owner shall be entitled to withhold statutory retainage as provided in the Modified AIA Document A201-2007, General Conditions of the Contract, to be held until 30 days following final completion of the Work. Further, Construction Manager shall be required to contract with all subcontractors to withhold retainage of each subcontractors amount. Amounts retained may be released to the subcontractors only upon Owner's prior written approval.

§7.1.8.1 Notwithstanding anything contained within the Contract Documents to the contrary, the Construction Manager shall not be entitled to any progress payment for any Work performed unless the Owner shall have received, and approved the following (i) insurance certificates; (ii) Payment and Performance Bonds for the Work to be performed; and (iii) appropriate affidavits and lien waivers from the Construction Manager, subcontractors and suppliers.

§7.1.9 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors. ~~and (2) The percentage of retainage held on Subcontracts shall be ten~~ (10) per cent, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§7.1.12 Construction Manager's Application for Payment shall be submitted in the form of AIA Documents G702 and G703 or such other form as the Architect and Owner jointly approve.

## § 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager, in accordance with the Illinois Local Government Prompt Payment Act, when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of Modified AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment and both have been approved by the Owner; and
- .3 a final Certificate for Payment has been issued by the Architect and approved by the Owner.
- .4 Construction Manager has satisfied all of the conditions of final payment., including without limitation, fulfillment of all requirements of Section 9.10 of Modified A201-2007

The Owner's final payment to the Construction Manager shall be made in accordance with the Illinois Local Government Prompt Payment Act. no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

←→

**§ 7.2.2** Final payment shall not be due until Construction Manager has furnished to Owner (1) a Partial Unconditional Waiver of Lien and a Sworn Statement that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which a Subcontractor, Supplier or Subconsultant may make a claim against the Payment Bond and/or for which the Owner might be responsible by virtue of Construction Liens or (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a Full Unconditional Waiver of Lien or a Full Conditional Waiver of Lien, as the case may be, from every Subcontractor, Supplier or Subconsultant that provided labor or materials for the Project certifying they have or will be paid in full from Owner's final payment consistent with the Construction Manager's final Sworn Statement, (3) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until 30 days prior written notice has been given to Owner, (4) a written statement that Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (5) copies of "as built" drawings and the other submittals required by this Agreement, and (6) if required by Owner, other data establishing payment of satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by Owner. Upon receipt of the Final Payment, Construction Manager shall furnish Owner a Full Unconditional Waiver of Lien for itself and from each of its Subcontractors, material suppliers and Subconsultants to the extent not previously furnished to the Owner. Acceptance of final payment by Construction Manager, a Subcontractor, Subconsultant or Supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment. Construction Manager shall include a similar waiver provision in each of its subcontracts and purchase orders. Without limiting the generality of the above, the Owner's approval shall be subject to the following non-exclusive requirements:

- a. Achievement of Final Completion, including, but not limited to, receipt of a Certificate of Occupancy and a Certificate of Substantial Completion.
- b. Owner's receipt and approval of a final Change Order establishing the final Contract Sum, and such Change Order shall include a detailed final accounting of all contingencies, allowances, savings, and costs.
- c. Owner's receipt of written assignment by all Subcontractors and suppliers of material and equipment of all warranties and guarantees in the form provided by the Owner.
- d. Owner's receipt of three (3) copies of any Maintenance Manual issued by any manufacturer and/or supplier.
- e. Owner's receipt of the Project Record reproducible drawing redlined showing all changes.
- f. Owner's receipt of conditional written releases of all liens and/or requests to file Mechanics', material-men's and like liens against the Project, signed by each Subcontractor and material-man who performed labor or furnished materials in connection with the Work. If any Subcontractor or material or equipment supplier refuses to furnish a release or waiver, the Construction Manager shall furnish a bond satisfactory to the Owner to indemnify him against any such possible lien.
- g. Owner's receipt of all deliverables as specified in the Project Specifications and Contract Documents.
- h. If required by the Owner, Owner's receipt of other data establishing payment or satisfaction of all such obligations.
- i. Owner receipt of all keys issued to Construction Manager and subcontractors.

**§ 7.2.3** The amount of the final payment shall be calculated as follows:

- a. Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum
- b. Subtract amounts, if any, for which the Owner withholds, in whole or in part, a final Certificate Payment as provided in Section 9.5.1 of Modified A201-2007, or other provisions of the Contract Documents.
- c. Subtract the aggregate of previous payments made by the Owner.
- d. Subtract any charge backs as provided in this Agreement or the Modified General Conditions of the Contract

**§ 7.2.4** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting,

~~and provided the other conditions of Section 7.2.1 have been met, T~~ the Architect will, within a reasonable period of time after receipt of the Final Application for Payment ~~seven days after receipt of the written report of the Owner's auditors,~~ either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the Modified AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the Modified AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

~~§ 7.2.53 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of any amounts in the disputed amount, the Owner shall pay the Construction Manager for the amounts not in dispute, the amount certified in the Architect's final Certificate for Payment.~~

~~§ 7.2.64 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~

~~§ 7.2.7 The signature of the Construction Manager on any Application for Payment constitutes the Construction Manager's certification to the Owner that (i) the Construction Manager's services listed in the Application for Payment have progressed to the level indicated and have been performed as required by this Agreement and the Contract Documents; (ii) the Construction Manager has paid its subcontractors, subconsultants and suppliers their proportional share of all previous payments received from the Owner and (iii) the amount requested is currently and properly due and owing.~~

### § 7.3 OWNERS RIGHT OF NON-PAYMENT

~~§ 7.3.1 Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any full payment to Construction Manager if any one or more of the following conditions exists:~~

- ~~.1 Construction Manager or subcontractors is/are in default of any of its/their obligations under this Agreement or otherwise is/are in default under any of the Contract Documents.~~
- ~~.2 Any part of such payment is attributable to services or Work that is defective or is not performed in accordance with the Contract Documents; provided, however, such payment shall be made as to the part thereof attributable to services or Work that is rendered or performed in accordance with the Contract Documents and is not defective.~~
- ~~.3 Construction Manager has failed to make timely payments due and owing to subcontractors or for material or labor used in the rendering of services or performance of Work for which Owner has made payment to Construction Manager.~~

## **ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of Modified AIA Document A201-2007. ~~AIA Document A201-2007.~~

~~(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)~~ Limits of such insurance shall be as follows. The Construction Manager shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements set forth herein and in Article 11 of Modified AIA Document A201-2007.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)



### §8.1 COMMERCIAL GENERAL LIABILITY

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage liability and a minimum general aggregate of \$2,000,000/. Coverages must include the following: All premises and operations, products/completed operations separation of insured, defense, and contractual liability (with no limitation endorsement.) The Owner and the Architect, and their respective officers, agents, consultants and employees shall be named as additional insureds on a primary, non-contributory basis for any liability arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, other than the Project itself.

### §8.2 AUTOMOBILE LIABILITY

When any motor vehicles (owned, non-owned and hired) are used in connection with Work to be performed, the Construction Manager must provide Automobile Liability Insurance with limits of not less than \$1,000,000.00 combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on a primary, non-contributory basis.

### §8.3 WORKERS COMPENSATION

Workers Compensation at statutory limits and Employers Liability with a policy limit of not less than five hundred thousand (\$500,000) per accident.

### §8.4 PROFESSIONAL LIABILITY

When any architects, engineers, or other professional consultants perform work in connection with the Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or proceed, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

### §8.5 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY

An Owner's and Contractor's Protective Liability policy designating the Owner must be provided with limits not less than \$1 million combined single limit per occurrence, for losses arising out of bodily injuries to or death of all persons and for damage to or destruction of property.

### §8.6 PROPERTY INSURANCE

Property Insurance written on a builder's risk "all risk" policy shall be purchased and maintained as provided in Section 11.3 of Modified AIA Document A201-2007.

### §8.7 EVIDENCE OF INSURANCE

§8.7.1 The Construction Manager must furnish the Owner with original Certificates of Insurance to be in force before work begins, the Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Construction Manager must submit evidence of insurance to the Owner before work begins. The receipt of any certificate does not constitute agreement by the Owner that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Owner to obtain certificates or other insurance evidence from Construction Manager is not a waiver by the Owner of any requirements for the Construction Manager to obtain and maintain the specified coverages. The Construction Manager must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Construction Manager of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the Owner retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

§8.7.2 Certificates of Insurance will show the Owner and Architect, and their respective, officers, agents, employees and consultants as additional insureds on the Comprehensive Liability Policy on a ISO Additional Insured Endorsement CG 20 10 or CG 20 26 and CG 20 01 04 13, or the equivalent. Certificates of insurance will show the

Owner and its officers, agents and employees as additional insureds on a Hired and Non-Owned Automobile Liability endorsement on form PPB 321 11 10 or its equivalent.

§8.7.3 All insurance must provide for 30 days prior written notice to be given to the Owner in the event coverage is substantially changed, canceled, or non-renewed.

§8.7.4 The coverages and limits furnished by Construction Manager in no way limit the Construction Manager's liabilities and responsibilities specified within the Agreement or by law.

§8.7.5 Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner, the insurer shall reduce or eliminate such deductibles or self-insured retentions as to the Village of Carol Stream, its officials, employees, and agents or the Construction Manager shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

§8.7.6 Any insurance or self-insurance programs maintained by the Owner do not contribute with insurance provided by the Construction Manager under the Agreement.

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of Modified A201-2007. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.~~

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

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

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

~~Litigation in a court of competent jurisdiction~~ the Circuit Court of Du Page County, State of Illinois.

~~Other: (Specify)~~

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of Modified AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of Modified A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1 and compensation shall not include anticipated profits.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for or assume responsibility for payment of all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination up to the amount payable to the subcontractor under the subcontract.

## § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of Modified AIA Document A201-2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of Modified A201-2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of Modified A201-2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3, above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

### § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of Modified AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of Modified AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 REGULATORY REQUIREMENTS AND CERTIFICATIONS

§11.1 Construction Manager shall comply with all applicable federal, state, county and local laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Both parties agree to comply, and assist one another in complying with all applicable Federal, State and local laws and regulations in carrying out their respective obligations under this Agreement.

§11.2 The Construction Manager agrees, represents and certifies:

- a. Is not barred from contracting with any unit of state or local government as a result of violating Section 33E-3 or 33E-4 of the Illinois Criminal Code (720 ILCS 5/33E-3 and 33E-4).
- b. Shall comply with the Illinois Drug Free Work Place Act (30 ILCS 580/1 et seq.).
- c. Shall comply with the Equal Opportunity Clause of the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.) and the Rules and Regulations of the Illinois Department of Human Rights.
- d. Shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101 et seq.).
- e. Shall itself comply with, and Construction Manager shall, in addition, require that any contracts entered into by Construction Manager relating to the Project shall require all subcontractor to comply with the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.). The Construction Manager acknowledges that certified payroll records submitted to the Owner under Section 5(a)(2) of the Prevailing Wage Act are public records subject to inspection and copying in accordance with the provisions of the Illinois Freedom of Information Act. (See 5 ILCS 140/2.10).
- f. Has a written sexual harassment policy in place in full compliance with 775 ILCS 5/2-105 (A) (4).
- g. Is not delinquent in the payment of any tax administered by the Illinois Department of Revenue nor is delinquent in the payment of any money owed to the Village.

## ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 Terms in this Agreement shall have the same meaning as those in Modified A201–2007.

### § 12.2 Ownership and Use of Documents

Section 1.5 of Modified A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 12.3 Governing Law

This Agreement shall be subject to, construed and interpreted under the laws of the State of Illinois. Exclusive venue and jurisdiction for all disputed shall be in the Circuit Court of DuPage County, Illinois. Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 12.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of Modified A201–2007, 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.

§ 12.5 Other provisions: If any provision of this Agreement is held to be unenforceable, no other provision shall be affected thereby, and the remainder of the Agreement shall be interpreted as if it did not contain the unenforceable provision.

§12.6 The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope of intent of the Agreement or the intent of any provision contained herein.

§12.7 Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the party giving such notice and shall be hand delivered or sent by e-mail, overnight courier, messenger or registered letter or fax, to the other parties at the address set forth below:

\_\_\_\_\_ If delivered to Owner:  
\_\_\_\_\_ Bob Mellor, Assistant Village Manager  
\_\_\_\_\_ Village of Carol Stream  
\_\_\_\_\_ 500 N. Gary Avenue  
\_\_\_\_\_ Carol Stream, Illinois 60188

\_\_\_\_\_ If delivered to Construction Manager:

\_\_\_\_\_ With a copy to:  
\_\_\_\_\_ James A. Rhodes  
\_\_\_\_\_ Klein, Thorpe & Jenkins, Ltd.  
\_\_\_\_\_ 20 North Wacker Drive, Suite 1660  
\_\_\_\_\_ Chicago, Illinois 60606

§12.8 All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

§12.9 Construction Manager is and shall be an independent contractor and shall not be deemed an agent, employee or partner of Owner. Nothing contained in this Agreement shall be construed as constituting a joint venture or partnership between Construction Manager and Owner.

§12.10 No failure or delay by the Owner in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power or remedy. No waiver of any provision of this Agreement will be effective unless in writing and signed by the Owner. Any waiver by the Owner of any provision of this Agreement will not be construed as a waiver of any other provision of this Agreement, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance.

§12.11 All rights and remedies provided in this Agreement are in addition to all other rights and remedies available at law or in equity.

§12.12 The Construction Manager warrants that it has no interest, direct or indirect, and shall not acquire any interest which would conflict in any manner with the performance of services required under this Agreement.

§12.13 The Company understands and agrees that the Owner, as a public body, is subject to and obligated to comply with the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, (FOIA) and certain information with respect to the Work performed hereunder may be subject to disclosure in whole or part under FOIA. The Construction Manager acknowledges that the Owner will have only a very short period of time from receipt of a FOIA request to comply with the request, and there is a significant amount of work required to process a request including collating and reviewing the information. The Construction Manager acknowledges the requirements of FOIA and agrees to comply with all requests made by the Owner for public records (as that term is defined by Section 2(c) of FOIA) in the undersigned's possession and provide the requested public records to the Owner within two (2) business days of the request being made by the Owner. The Construction Manager agrees to indemnify and hold harmless the Owner from all claims, costs, penalty, losses and injuries (including but not limited to, attorneys' fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the Owner under this Agreement.

§12.14 Owner and Construction Manager each represent and warrant that they have full power and authority to enter into this Agreement, and the persons signing on behalf of them are authorized to do so.

«—»

**ARTICLE 132 SCOPE OF THE AGREEMENT**

§ 123.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 123.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 ~~Modified~~ AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 ~~AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~

« »

- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

« »

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

« »

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

« »« »

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

« »

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

« »« »

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

**VILLAGE OF CAROL STREAM  
VILLAGE HALL & POLICE ADDITION & RENOVATION  
FEE PROPOSAL  
CONSTRUCTION MANAGEMENT SERVICES**

**FEE INFORMATION:**

- A. CM Fee** for Construction Management Services provided during construction: **Two percent (2 %)** of all final trade, general conditions, insurance, preconstruction & related costs.
- B. Fixed Preconstruction Services Fee** is separate of the CM Fee: **\$40,000**
- C. Fixed General Conditions** is **\$465,000** (based on fifteen (15) months of demolition & construction) and includes for items not included in the Pre-Construction services fee nor the CM Services fee.
- D.** Professional & General Liability Insurance (N.I.C. in the CM Fee or General Conditions), would be **sixty hundredths of a percent (0.60 %)** of the **Total Contract Amount** for the project.
- E.** Consideration: **All trade & vendor contracts will be prequalified and competitively bid.**
- F.** Change Order Request (COR): CM mark-up for Village Approved COR @ **ten percent (10 %)**
- G.** The bond premium cost for the **Performance Bond** (N.I.C. in the CM Fee or General Conditions), would be **seventy hundredths of a percent (0.70 %)** of the **Total Final Contract Amount** for the project, for 1 year labor & material warranty.
- H.** This proposal is being submitted with the understanding that a mutually agreeable contract for Construction Management Services (at risk) will be executed between the Village and the CM.

**Mr. J. Andrew Jones**, being duly sworn, deposes and says that I am the **President of MTI Construction Services** Construction Management Services firm, and the responses to the RFP for Construction Management Services and all statements therein contained are true and correct. I have examined and carefully prepared this Fee Proposal, based upon the RFP & Amendment issued, and have checked the same in detail prior to submittal. I have full authority to make statements and submit this proposal on this firm's behalf.

Name or Organization: **MTI Construction Services**

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

Title: **President**

Subscribed and sworn before me this **sixth (6<sup>th</sup>) day of July, 2016.**

Notary Public: \_\_\_\_\_

Notary Stamp:

Dated this **6<sup>th</sup>** day of July, 2016.

**MTI CONSTRUCTION SERVICES**

VILLAGE OF CAROL STREAM  
 VILLAGE HALL & POLICE ADDITION & RENOVATION  
 FEE PROPOSAL  
 CONSTRUCTION MANAGEMENT SERVICES

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Mr. J. Andrew Jones, being duly sworn, deposes and says that I am the **President of MTI Construction Services** Construction Management Services firm, and the responses to the RFP for Construction Management Services and all statements therein contained are true and correct. I have examined and carefully prepared this Fee Proposal, based upon the RFP & Amendment issued, and have checked the same in detail prior to submittal. I have full authority to make statements and submit this proposal on this firm's behalf.

Name or Organization: MTI Construction Services

By: *J. Andrew Jones*  
 Title: President

Subscribed and sworn before me this sixth (6<sup>th</sup>) day of July, 2016.

Notary Public: *Laura Priehs*

Notary Stamp:

Dated this 6<sup>th</sup> day of July, 2016.



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION DECLARING SURPLUS PROPERTY  
OWNED BY THE VILLAGE OF CAROL STREAM**

WHEREAS, in the opinion of the Corporate Authorities of the Village of Carol Stream, Illinois, it is no longer necessary or useful, or for the best interests of the Village of Carol Stream to retain ownership of the personal property described in "Exhibit A"; and

WHEREAS, the described personal property has been determined by the Corporate Authorities of the Village of Carol Stream to have negligible value to the Village; and

WHEREAS, it has been determined by the Mayor and Board of Trustees of the Village of Carol Stream to dispose of the surplus property.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF CAROL STREAM, DUPAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWER, as follows:

SECTION 1: That the Mayor and Board of Trustees of the Village of Carol Stream find that the personal property described in Exhibit "A", now owned by the Village of Carol Stream, is no longer useful and authorize its disposal per the attached memorandum dated July 26, 2016.

SECTION 2: This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED AND APPROVED THIS 1<sup>st</sup> DAY OF AUGUST, 2016.

AYES:

NAYS:

ABSENT:

\_\_\_\_\_  
Frank Saverino, Sr., Mayor

ATTEST:

\_\_\_\_\_  
Laura Czarnecki, Village Clerk

**EXHIBIT "A"**

*Village of Carol Stream*  
Interdepartmental Memo

TO: Joseph Breinig, Village Manager  
FROM: Tia Messino, Management Analyst  
DATE: July 26, 2016  
RE: Surplus Equipment

The Department has identified the equipment below to be declared surplus:

**Rusted Metal Shelving**  
**Industrial Shop Desk**

**No ID**  
**No ID**

Due to wear and tear these items no longer have value to the Village but may have value at auction or as scrap.

**SHO Light Tower #591**  
**Monroe Salt Spreader**

**M D905**  
**MS966-RF-GB**

Due to improved equipment these items no longer have value to the Village but may have value at auction or as scrap.

Staff recommends that these items be declared surplus by the Mayor and Board of Trustees and that the Public Works Director be authorized to sell or dispose of the items.

*Village of Carol Stream*  
**Interdepartmental Memo**

**TO:** Joseph E. Breinig, Village Manager  
**FROM:** Rose Armstrong, Secretary   
**DATE:** July 19, 2016  
**RE:** Raffle License Application  
Humanitarian Service Project (HSP)

The Humanitarian Service Project (HSP) is sponsoring a Bowling Fundraiser to benefit Strike Against Hunger to be held at Fox Bowl in Wheaton on Thursday, September 29, 2016 and has submitted a raffle application. Raffle tickets will be sold from August 15, 2016 – September 26, 2016 for \$5.00 each.

They have requested a waiver of both the license fee and Manager's Fidelity Bond as indicated in the attached letter request. The raffle license application and required documentation is on file in the Village Clerk's office for your review.

Please place this item on the agenda for review and approval by the Village Board of Trustees at their Monday, August 1, 2016 Board meeting.

Thank you.

Attachment



# Humanitarian Service Project

Serving Humanity Since 1979

465 Randy Road - Carol Stream, IL 60188

630 221-8340 / FAX 630 221-8371

[hsp@humanitarianservice.org](mailto:hsp@humanitarianservice.org)

[www.humanitarianservice.org](http://www.humanitarianservice.org)

Village of Carol Stream  
500 N. Gary Ave.  
Carol Stream, IL 60188

July 15, 2016

re: Raffle License

Dear Friends,

We wish to request a waiver of the license fees and bond requirement for a raffle license. At a meeting held on July 12, 2016 there was unanimous agreement by all members present to request such a waiver regarding the special fund raising event scheduled for September 29, 2016 named the HSP Bowl.

With best wishes,

Floyd Kettering  
Chairman/CFO/Co-Founder

Serving DuPage & Kane Counties

Village of Carol Stream  
 Schedule of Bills  
 For Village Board Approval on August 1, 2016

**AGENDA ITEM**  
2-1 8-1-16

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>ACCESS ONE</b>					
PHONE SRV JULY/2016	3,247.37	01590000-52230	TELEPHONE	1697643	
	<u>3,247.37</u>				
<b>B &amp; F CONSTRUCTION CODE SERVICES, INC</b>					
PLAN RVW 285 E FULLERTON	392.34	01643700-52253	CONSULTANT	44308	
PLUMBING INSP'S - JUNE	1,859.20	01643700-52253	CONSULTANT	44363	
PROF SRV 620 CENTER AVE	3,122.76	01643700-52253	CONSULTANT	44401	
SRV FOR GRAPHIC PACHAGING	494.34	01643700-52253	CONSULTANT	44464	
	<u>5,868.64</u>				
<b>BRANCATO LANDSCAPING</b>					
MULCH INSTALLATION NORTH AV/TWN CTR	15,000.00	01670400-52272	PROPERTY MAINTENANCE	3607	
	<u>15,000.00</u>				
<b>C S PUBLIC LIBRARY</b>					
DEVELOPER DONATION JUNE/2016	641.77	01-24401	DEPOSIT-LIBRARY DEVEL CONTRB DEV DON JUN/16		
	<u>641.77</u>				
<b>CAROL STREAM PARK DISTRICT</b>					
DEVELOPER DONATIONS JUNE/2016	8,115.00	01-24403	DEPOSIT-PARK DIST DEV CONTRB DEV DON JUN/16		
	<u>8,115.00</u>				
<b>CLARKE ENVIROMENTAL MOSQUITO MGMNT</b>					
MOSQUITO MNGMT SRV'S SEPT/16	8,325.00	01670100-52269	MOSQUITO ABATEMENT	6358336-FINAL	
	<u>8,325.00</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>COMED</b>					
106 GOLDENHILL AERATOR	133.80	01670600-53210	ELECTRICITY	2127117053 7/22/16	
1128 EVERGREEN TRL	62.48	04101500-53210	ELECTRICITY	0291093117 7/20/16	
1345 GEORGETOWN CONTROLLER	17.72	01670300-53213	STREET LIGHT ELECTRICITY	1603109101 7/21/16	
1350 TALL OAKS STN	45.32	04101500-53210	ELECTRICITY	2073133107 7/19/16	
1415 MAPLE RIDGE PUMP	226.72	01670600-53210	ELECTRICITY	5838596003 7/20/16	
301 ANTELOPE TRL	66.33	01670300-53213	STREET LIGHT ELECTRICITY	0801065136 7/19/16	
333 FULLERTON WELL #3	767.29	04201600-53210	ELECTRICITY	0300009027 7/19/16	
391 FLINT TRL CONTROLLER	53.73	01670300-53213	STREET LIGHT ELECTRICITY	2207156029 7/19/16	
391 ILLINI DR PUMP STN	112.62	01670600-53210	ELECTRICITY	4430145023 7/19/16	
451 SILVERLEAF LIGHTS	38.19	01670300-53213	STREET LIGHT ELECTRICITY	0030086009 7/19/16	
491 CHEYENNE TRL	16.63	01670300-53213	STREET LIGHT ELECTRICITY	6597112015 7/20/16	
500 N GARY CONTROLLER	136.88	01670300-53213	STREET LIGHT ELECTRICITY	6675448009 7/19/16	
506 CHEROKEE LIGHT	42.79	01670300-53213	STREET LIGHT ELECTRICITY	3153036011 7/19/16	
512 CANYON TRL	16.86	01670300-53213	STREET LIGHT ELECTRICITY	1043062112 07/20/16	
594 NEZ PERCE LITE RT/25	47.51	01670300-53213	STREET LIGHT ELECTRICITY	0975048036 7/20/16	
850 LONGMEADOW	149.28	01670600-53210	ELECTRICITY	1865134015 7/19/16	
867 SHENANDOAH	19.60	01670600-53210	ELECTRICITY	4483019016 7/19/16	
879 DORCHESTER AERATOR	145.41	01670600-53210	ELECTRICITY	0803155026 7/19/16	
880 PAPOOSE CT	88.95	01670300-53213	STREET LIGHT ELECTRICITY	0822115042 7/19/16	
990 DEARBORN CIR CONTROLLER	58.09	01670300-53213	STREET LIGHT ELECTRICITY	3480136046 7/19/16	
KUHN RD CAMERA	38.89	01662300-52298	ATLE SERVICE FEE	4202129060 7/19/16	
MASTER ACCT STREET LIGHTS	596.73	01670300-53213	STREET LIGHT ELECTRICITY	5853045025 7/21/16	
	<b>2,881.82</b>				
<b>CONSTELLATION NEW ENERGY</b>					
200 TUBEWAY LIFT STN	263.46	04101500-53210	ELECTRICITY	00337284220001 JULY	
300 KUHN RD WEST SIDE PAS	2,546.69	04201600-53210	ELECTRICITY	0033944169001 7/2016	
	<b>2,810.15</b>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>COSTCO WHOLESALE</b>					
RETIREMENT PARTY - REFRESHMENTS	22.89	01660100-53317	OPERATING SUPPLIES	INV 6910855	
	<u>22.89</u>				
<b>CRYSTAL MGMT &amp; MAINTENANCE SRV'S CORP</b>					
CLEANING SRV'S AUGUST/2016	860.00	01670100-52276	JANITORIAL SERVICES	23886	
CLEANING SRV'S AUGUST/2016	1,385.00	01680000-52276	JANITORIAL SERVICES	23886	
	<u>2,245.00</u>				
<b>DAILY HERALD</b>					
PREVAILING WAGE ORD	21.00	01580000-52234	DUES & SUBSCRIPTIONS	T4444660	
	<u>21.00</u>				
<b>DAVID G BAKER</b>					
VLG BOARD MTG TELECAST SERVICES	192.50	01590000-52253	CONSULTANT	071816	
	<u>192.50</u>				
<b>DUPAGE CO CHILDRENS CTR</b>					
MUNICIPAL CONTR JUL/16 - JUN/17	4,000.00	01662400-53330	INVESTIGATION FUND	CS001/2016	
	<u>4,000.00</u>				
<b>DUPAGE COUNTY</b>					
REGIS FOR NOTARY COMM W/COUNTY	10.00	01612900-52234	DUES & SUBSCRIPTIONS	LINDA TISDELL	
REGIS FOR NOTARY COMM W/COUNTY	10.00	01612900-52234	DUES & SUBSCRIPTIONS	MORRISON/HELENE	
	<u>20.00</u>				
<b>DUPAGE COUNTY RECORDER</b>					
RECORDINGS-WAYNE AGR/COMP PLAN	180.00	01580000-52233	RECORDING FEES	201607210157	
WAYNE ANNEX, PILOT & O'REILLY EASEMENTS	208.00	01580000-52233	RECORDING FEES	201607210155	
WEED LIENS ARAPAHOE/NEBRASKA	17.00	01580000-52233	RECORDING FEES	201606070071	
	<u>405.00</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>DUPAGE WATER COMMISSION</b>					
WATER PURCH - JUNE	500,337.60	04201600-52283	DUPAGE CTY WATER COMMISSION	1392	
PRINCIPLE/INTEREST WTR LOAN	9,808.75	04200100-56491	LOAN INTEREST	11318	
PRINCIPLE/INTEREST WTR LOAN	49,043.74	04200100-56490	LOAN PRINCIPAL	11318	
	<b>559,190.09</b>				
<b>GLENBARD NORTH HIGH #87</b>					
DONATIONS JUNE/2016	480.00	01-24408	DEPOSIT SCHOOL 87 CASH	DONATIONS JUN/16	
	<b>480.00</b>				
<b>GOVTEMPSUSA LLC</b>					
OFFICE MGR 07/10	1,419.20	01590000-52253	CONSULTANT	2024400	
OFFICE MGR 07/17	1,419.20	01590000-52253	CONSULTANT	2024401	
PROPERTY INSPECTOR- 7/17	700.00	01642100-52253	CONSULTANT	2024399	
	<b>3,538.40</b>				
<b>H &amp; H ELECTRIC COMPANY</b>					
STREETLIGHT EMERGENCY REPAIR	396.84	01670300-52271	STREET LIGHT MAINTENANCE	26429	
STREETLIGHT EMERGENCY REPAIR	2,157.31	01670300-52271	STREET LIGHT MAINTENANCE	26428	
	<b>2,554.15</b>				
<b>HD SUPPLY WATERWORKS LTD</b>					
LARGE METER PURCHASE	12,260.00	04201400-53333	NEW METERS	F841974	
	<b>12,260.00</b>				
<b>HILARY MABBITT</b>					
PER DIEM TRNG DENVER COLORADO	356.75	01662300-52223	TRAINING	IACP DRE 8/12-8/16	
	<b>356.75</b>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>JULIE INC</b>					
QTR LOCATES THRU AUG/2016	519.78	01670600-52272	PROPERTY MAINTENANCE	2016-0371 8/30/16	
QTR LOCATES THRU AUG/2016	519.78	01670300-52272	PROPERTY MAINTENANCE	2016-0371 8/30/16	
QTR LOCATES THRU AUG/2016	519.78	04201600-52272	PROPERTY MAINTENANCE	2016-0371 8/30/16	
QTR LOCATES THRU AUG/2016	519.78	04101500-52272	PROPERTY MAINTENANCE	2016-0371 8/30/16	
	<u>2,079.12</u>				
<b>JASON EAGAN</b>					
PER DIEM FOR TRAINING	296.75	01662300-52223	TRAINING	IACP DRE 8/12-8/16	
	<u>296.75</u>				
<b>KELLY F LALLY</b>					
PER DIEM 8/7- 8/11 TRAINING	281.00	01662400-52223	TRAINING	ICAC NATL CONF	
	<u>281.00</u>				
<b>LANDSCAPE MATERIAL &amp; FIREWOOD SALES INC</b>					
ADDT'L MULCH FOR NORTH AVE	3,850.00	01670400-53317	OPERATING SUPPLIES	22110	
MULCH FOR TWN CTR & NORTH AVE	770.00	01670400-53317	OPERATING SUPPLIES	22176	
	<u>4,620.00</u>				
<b>LFC ENTERTAINMENT</b>					
LIBIDO FUNK CIRCUS CONCERT	1,950.00	01750000-52288	CONCERT SERIES	8/11/16 CONCERT	
	<u>1,950.00</u>				
<b>MELROSE PYROTECHNICS</b>					
JULY 4TH FIREWORKS VLG SHARE	13,000.00	01750000-52291	MISC EVENTS/ACTIVITIES	18769	
	<u>13,000.00</u>				
<b>MNJ TECHNOLOGIES DIRECT</b>					
SERVER SOFTWARE RNWL	3,775.58	01652800-52255	SOFTWARE MAINTENANCE	3461672	
	<u>3,775.58</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>MUNICIPAL GIS PARTNERS INC</b>					
MGP SERVICES JUNE/2016	11,394.39	01652800-52257	GIS SYSTEM	3112	
	<u>11,394.39</u>				
<b>NAPA AUTO CENTER</b>					
AUTO PARTS	27.58	04201600-53317	OPERATING SUPPLIES	11007487 6/30/16	
AUTO PARTS	37.14	01696200-53316	TOOLS	11007487 6/30/16	
AUTO PARTS	104.58	01696200-53317	OPERATING SUPPLIES	11007487 6/30/16	
AUTO PARTS	146.99	04201600-53316	TOOLS	11007487 6/30/16	
AUTO PARTS	1,298.00	01696200-54412	OTHER EQUIPMENT	11007487 6/30/16	
AUTO PARTS	3,858.81	01696200-53354	PARTS PURCHASED	11007487 6/30/16	
	<u>5,473.10</u>				
<b>NICOR</b>					
CHARGER CT	84.51	04101500-53230	NATURAL GAS	86606011178 7/11/16	
	<u>84.51</u>				
<b>NORTH AMERICA CENTRAL SCHOOL BUS HOLDING CO LLC</b>					
SHUTTLES FOR 4TH OF JULY AND TROOP CONCEP	175.00	01750000-52288	CONCERT SERIES	565-00881	
SHUTTLES FOR 4TH OF JULY AND TROOP CONCEP	1,920.00	01750000-52288	CONCERT SERIES	565-00881	
	<u>2,095.00</u>				
<b>PAUL TRIPPETT</b>					
AUG 8- 11 2016 VACTOR TRNG	178.50	01696200-52223	TRAINING	PER DIEM VACTOR TRNG	
	<u>178.50</u>				
<b>PLOTE CONSTRUCTION INC</b>					
2016 FLEX PAVEMENT /SIMKUS PRKG LOT	88,654.61	11-21112	RETAINAGE - PLOTE	160050.06	
	<u>88,654.61</u>				
<b>QUICK TIRES INC</b>					
TIRE DISPOSAL	92.80	01696200-53317	OPERATING SUPPLIES	6915	
	<u>92.80</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>REFUNDS MISC</b>					
OVER PAID ON ADM/PUBLIC SAFETY FEE	475.00	01000000-45321	TOWING FEE	CS16020612	
REFUND RED LIGHT TICKET PD ONLINE	100.00	01000000-45402	ORDINANCE FORFEITS	TICKET 16002321	
	<u>575.00</u>				
<b>REFUNDS PRESERVATION BONDS</b>					
DRIVEWAY & STOOP BOND REFUND	300.00	01-24302	ESCROW - GRADING	1354 PORTSMOUTH	
DRIVEWAY & STOOP BOND REFUND	300.00	01-24302	ESCROW - GRADING	717 BUFFALO	
DRIVEWAY APRON BOND REFUND	300.00	01-24302	ESCROW - GRADING	1188 WINDING GLEN-1	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	1356 PORTSMOUTH	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	399 STONEWOOD CIR	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	405 BURKE DR	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	456 BRISTOL	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	707 CIMARRON DR	
DRIVEWAY BOND REFUND	300.00	01-24302	ESCROW - GRADING	960 WACO DR	
DRIVEWAY W/CURB CUT BOND REFUND	300.00	01-24302	ESCROW - GRADING	794 PENFIELD	
DRIVEWAY, PATIO & STOOP BOND REFUND	300.00	01-24302	ESCROW - GRADING	551 APACHE LN	
DRIVEWAY, STOOP & PATIO BOND REFUND	300.00	01-24302	ESCROW - GRADING	1250 MCCORMICK	
DRIVEWAY, STOOP & WALK BOND REFUND	300.00	01-24302	ESCROW - GRADING	390 ARROWHEAD	
PATIO BOND REFUND	200.00	01-24302	ESCROW - GRADING	839 DUGOUT-1	
PATIO BOND REFUND	200.00	01-24302	ESCROW - GRADING	965 OLD MEADOW	
SEWER CONNECTION BOND REFUND	525.00	01-24302	ESCROW - GRADING	520 BRISTOL DR	
	<u>4,825.00</u>				
<b>REFUNDS TAX STAMPS</b>					
TAX STAMP #27793 REFUND	975.00	01000000-41208	REAL ESTATE TRANSFER TAX	1316 SHEFFIELD CT	
	<u>975.00</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>RUSH TRUCK CENTERS</b>					
AUTO PARTS	86.83	01696200-53354	PARTS PURCHASED	3003172315	
PARTS	31.91	01696200-53354	PARTS PURCHASED	3003054567	
RETURNED PART	-28.80	01696200-53354	PARTS PURCHASED	3003115307	
	<u>89.94</u>				
<b>SIKICH LLP</b>					
AUDIT FEES FY/16	1,000.00	04103100-52237	AUDIT FEES	261665	
AUDIT FEES FY/16	1,000.00	04203100-52237	AUDIT FEES	261665	
AUDIT FEES FY/16	2,100.00	01520000-52237	AUDIT FEES	261665	
	<u>4,100.00</u>				
<b>STEPHEN FROST</b>					
CHICAGO EXP CONCERT SERIES	1,800.00	01750000-52288	CONCERT SERIES	8/4/16 CONCERT	
	<u>1,800.00</u>				
<b>THEODORE POLYGRAPH SERVICE</b>					
POLYGRAPH -PD CANDIDATE J DRAKE	150.00	01510000-52228	PERSONNEL HIRING	5321	
	<u>150.00</u>				
<b>THOMSON REUTERS-WEST</b>					
2015 SUPPLEMENT	81.00	01650100-53315	PRINTED MATERIALS	834350218	
	<u>81.00</u>				
<b>TM PRODUCTION SERVICES</b>					
SOUND/TECHINAL SRV FOR CONCERT	500.00	01750000-52288	CONCERT SERIES	8/18/16 CONCERT	
SOUND/TECHNICAL SRV CONCERT	500.00	01750000-52288	CONCERT SERIES	8/4/16 CONCERT	
	<u>1,000.00</u>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>TRANSYSTEMS CORPORATION</b>					
KUHN RD BIKE EXT SRV 6/11-7/15 2016	15,304.07	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	06-3003963	
LIES RD BIKE EXT SRV 6/10 -7/15 2016	15,342.02	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	06-3003967	
PH III CONST SRV'S LIES RD	2,344.59	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	01-30003981	
WEST BRANCH /FAIR OAKS RD BIKE TRL	40,148.18	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	02-3000859	
	<b>73,138.86</b>				
<b>U S POSTMASTER</b>					
RENEWAL OF PERMIT THRU 9/11/2017	215.00	01610100-52229	POSTAGE		PERMIT #44
REPLENISH POSTAGE MACHINE	10,000.00	01610100-52229	POSTAGE		POC 14021044 -2016
	<b>10,215.00</b>				
<b>UTILITY DYNAMICS CORPORATION</b>					
LED PH IV PAY REQ #3	-5,638.29	11-21450	RETAINAGE - UTILITY DYNAMICS	0718-2090	
LED PH IV PAY REQ #3	56,382.90	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	0718-2090	
LED PHASE IV PAY REQ #2	-14,798.10	11-21450	RETAINAGE - UTILITY DYNAMICS	0706-2090	
LED PHASE IV PAY REQ #2	147,981.00	11740000-55486	ROADWAY CAPITAL IMPROVEMENT	0706-2090	
	<b>183,927.51</b>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>VERIZON WIRELESS</b>					
SERV FRM JUN 14- JUL 13	18.98	01642100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	18.98	01662500-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	37.96	01643700-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	60.81	01610100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	60.81	01690100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	79.79	01680000-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	98.82	04101500-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	98.82	04200100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	98.84	01600000-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	117.75	04201600-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	117.75	04201600-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	123.85	01662300-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	227.16	01590000-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	304.05	01662400-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	336.98	01652800-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	342.01	01620100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	364.86	01664700-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	409.75	01670100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	468.35	01660100-52230	TELEPHONE	9768710737	
SERV FRM JUN 14- JUL 13	2,064.32	01662700-52230	TELEPHONE	9768710737	
	<b>5,450.64</b>				
<b>WEST SIDE TRACTOR SALES</b>					
AUTO PARTS	86.64	01696200-53354	PARTS PURCHASED	N38397	
AUTO PARTS	276.38	01696200-53354	PARTS PURCHASED	N38938	
	<b>363.02</b>				

**Village of Carol Stream  
Schedule of Bills  
For Village Board Approval on August 1, 2016**

<u>Vendor / Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Account Description</u>	<u>Invoice No.</u>	<u>Purchase Order</u>
<b>WHEATON BANK AND TRUST</b>					
WHEATON BANK FEES - JUNE	357.74	04103100-52256	BANKING SERVICES	7509063 JUNE/2016	
WHEATON BANK FEES - JUNE	357.74	04203100-52256	BANKING SERVICES	7509063 JUNE/2016	
WHEATON BANK FEES - JUNE	1,058.82	01610100-52256	BANKING SERVICES	7509063 JUNE/2016	
	<u>1,774.30</u>				
<b>WILLIAMS ASSOCIATES ARCHITECTS, LTD</b>					
PROF SRV'S FOR JUNE 2016	47,727.49	11740000-55490	VILLAGE HALL RENOVATION	0017237	
	<u>47,727.49</u>				
<b>XEROX CAPITAL SERVICES LLC</b>					
WC7775P COPIER JUNE/2016	1,363.17	01590000-52231	COPY EXPENSE	716257720	
	<u>1,363.17</u>				
<b>GRAND TOTAL</b>	<u><u>\$1,103,706.82</u></u>				

**The preceding list of bills payable totaling \$1,103,706.82 was reviewed and approved for payment.**

**Approved by:**

  
\_\_\_\_\_  
Joseph Breinig - Village Manager

**Date:** 7/29/16

**Authorized by:**

\_\_\_\_\_  
Frank Saverino Sr - Mayor

\_\_\_\_\_  
Laura Czarnecki- Village Clerk

**ADDENDUM WARRANTS**  
**July 19, 2016 thru Aug 1, 2016**

Fund	Check #	Vendor	Description	Amount
General	A C H	Wheaton Bank & Trust	Payroll July 4, 2016 thru July 17, 2016	612,285.01
Water & Sewer	A C H	Wheaton Bank & Trust	Payroll July 4, 2016 thru July 17, 2016	<u>44,157.77</u>
				<u><u>656,442.78</u></u>

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2016

By: \_\_\_\_\_  
 Frank Saverino Sr - Mayor

\_\_\_\_\_  
 Laura Czarnecki - Village Clerk

Village of Carol Stream  
**General Fund Budget Summary**  
 For the Month Ended June 30, 2016

**AGENDA ITEM**  
*M-4 8-1-16*

	MONTH				YTD				BUDGET				
	Last Year Jun	Current Year Jun	Monthly Variance \$ %		Last Year YTD	Current Year YTD	YTD Variance \$ %		Annual Budget	YTD Budget	YTD Actual	Variance \$ %	
<b>REVENUES</b>													
Sales Tax	\$ 568,278	\$ 632,757	64,479 11%		\$ 1,028,361	\$ 1,238,945	210,585 20%		\$ 7,750,000	\$ 1,156,265	\$ 1,238,945	82,680 7%	
Home Rule Sales Tax	332,830	364,773	31,943 10%		590,316	724,064	133,748 23%		4,415,000	658,698	724,064	65,366 10%	
State Income Tax	295,617	258,913	(36,704) -12%		1,007,459	800,569	(206,891) -21%		4,050,000	865,488	800,569	(64,919) -8%	
Utility Tax - Electricity	137,182	131,629	(5,553) -4%		278,576	267,406	(11,170) -4%		1,870,000	267,737	267,406	(331) 0%	
Telecommunications Tax	116,114	104,925	(11,189) -10%		219,929	200,109	(19,821) -9%		1,190,000	224,750	200,109	(24,641) -11%	
Fines (Court, Ord., ATLE, Towing)	166,263	109,956	(56,307) -34%		328,021	226,216	(101,805) -31%		1,697,000	287,523	226,216	(61,307) -21%	
Natural Gas Use Tax	28,512	35,742	7,230 25%		82,030	84,494	2,464 3%		570,000	83,446	84,494	1,049 1%	
Other Taxes (Use, Hotel, PPRT Real Estate, Road & Bridge)	295,175	309,410	14,235 5%		460,139	472,488	12,349 3%		2,616,300	543,624	472,488	(71,136) -13%	
Licenses (Vehicle, Liquor, etc.)	189,311	176,343	(12,969) -7%		326,018	323,318	(2,701) -1%		616,400	335,700	323,318	(12,383) -4%	
Cable Franchise Fees	-	-	- 0%		102,573	63,643	(38,931) -38%		704,000	117,333	63,643	(53,691) -46%	
Building Permits	48,635	59,821	11,185 23%		89,750	113,127	23,378 26%		627,500	132,000	113,127	(18,873) -14%	
Fees for Services	66,045	59,519	(6,526) -10%		108,333	108,474	141 0%		615,800	118,417	108,474	(9,943) -8%	
Interest Income	341	1,496	1,154 338%		576	3,183	2,607 453%		15,000	2,500	3,183	683 27%	
All Other / Miscellaneous	94,033	65,885	(28,148) -30%		150,023	116,940	(33,083) -22%		1,163,000	202,167	116,940	(85,227) -42%	
<b>Revenue Totals</b>	<b>2,338,335</b>	<b>2,311,167</b>	<b>(27,169) -1%</b>		<b>4,772,104</b>	<b>4,742,975</b>	<b>(29,128) -1%</b>		<b>27,900,000</b>	<b>4,995,647</b>	<b>4,742,975</b>	<b>(252,672) -5%</b>	
<b>EXPENDITURES</b>													
Fire & Police Commission	1,598	144	(1,455) -91%		4,748	1,794	(2,954) -62%		13,511	2,252	1,794	(459) -20%	
Legislative Board	2,365	37,592	35,228 1490%		6,081	69,778	63,697 1047%		139,890	52,717	69,778	17,061 32%	
Plan Commission & ZBA	-	540	540 100%		234	1,126	891 380%		5,243	874	1,126	252 29%	
Legal Services	31,582	21,368	(10,214) -32%		51,858	43,925	(7,933) -15%		298,000	49,666	43,925	(5,741) -12%	
Village Clerk	2,611	2,806	195 7%		5,777	5,244	(534) -9%		38,887	7,173	5,244	(1,929) -27%	
Administration	69,575	84,227	14,652 21%		166,310	168,741	2,431 1%		951,924	158,654	168,741	10,087 6%	
Employee Relations	16,832	21,178	4,346 26%		49,533	43,633	(5,901) -12%		412,940	68,823	43,633	(25,191) -37%	
Financial Management	60,830	61,421	591 1%		160,123	141,114	(19,009) -12%		920,967	153,495	141,114	(12,380) -8%	
Engineering Services	70,552	107,393	36,842 52%		177,424	202,627	25,203 14%		1,398,163	233,027	202,627	(30,400) -13%	
Community Development	49,519	68,616	19,096 39%		153,355	141,439	(11,916) -8%		1,127,636	187,939	141,439	(46,501) -25%	
Information Technology	33,329	99,959	66,630 200%		90,245	173,644	83,399 92%		1,087,561	181,260	173,644	(7,616) -4%	
Police	870,961	957,517	86,556 10%		2,270,546	2,082,558	(187,988) -8%		14,218,899	2,369,817	2,082,558	(287,259) -12%	
Public Works	248,459	292,962	44,503 18%		592,279	536,880	(55,399) -9%		4,195,811	699,302	536,880	(162,422) -23%	
Municipal Building	31,875	27,252	(4,623) -15%		63,448	49,990	(13,458) -21%		379,063	63,177	49,990	(13,187) -21%	
Municipal Garage	(9,475)	40,367	49,842 -526%		15,721	5,221	(10,500) -67%		-	-	5,221	5,221 100%	
Transfers and Agreements	-	-	- 0%		-	-	- 0%		2,668,500	190,666	-	(190,666) -100%	
Town Center	5,251	11,676	6,425 122%		5,251	11,676	6,425 122%		43,005	24,475	11,676	(12,799) -52%	
<b>Expenditure Totals</b>	<b>1,485,865</b>	<b>1,835,019</b>	<b>349,154 23%</b>		<b>3,812,934</b>	<b>3,679,388</b>	<b>(133,546) -4%</b>		<b>27,900,000</b>	<b>4,443,317</b>	<b>3,679,388</b>	<b>(763,929) -17%</b>	
<b>Net Increase / (Decrease)</b>	<b>852,470</b>	<b>476,148</b>	<b>(376,322)</b>		<b>959,170</b>	<b>1,063,587</b>	<b>104,418</b>		<b>-</b>	<b>552,330</b>	<b>1,063,587</b>	<b>511,257</b>	

Village of Carol Stream  
**Water and Sewer Fund Budget Summary**  
For the Month Ended June 30, 2016

	MONTH				YTD				BUDGET					
	Last Year Jun	Current Year Jun	Monthly Variance		Last Year YTD	Current Year YTD	YTD Variance		Annual Budget	YTD Budget	YTD Actual	Variance		
			\$	%			\$	%				\$	%	
<b>REVENUES</b>														
Water Billings	\$ 626,577	\$ 631,078	4,501	1%	\$ 1,220,254	\$ 1,256,653	36,399	3%	\$ 7,260,000	\$ 1,166,684	\$ 1,256,653	89,969	8%	
Sewer Billings	233,348	243,084	9,736	4%	459,707	477,896	18,189	4%	2,887,000	488,035	477,896	(10,139)	-2%	
Penalties/Admin Fees	12,908	16,922	4,014	31%	26,799	30,762	3,963	15%	197,000	32,833	30,762	(2,072)	-6%	
Connection/Expansion Fees	2,684	15,425	12,741	475%	17,659	15,425	(2,234)	-13%	62,500	10,417	15,425	5,008	48%	
Interest Income	344	3,329	2,985	868%	602	6,240	5,638	937%	15,000	2,500	6,240	3,740	150%	
Rental Income	10,395	3,500	(6,895)	-66%	26,673	36,803	10,130	38%	175,000	29,167	36,803	7,636	26%	
All Other / Miscellaneous	64,093	75,164	11,071	17%	67,872	76,188	8,316	12%	86,500	4,583	76,188	71,605	1562%	
<b>Revenue Totals</b>	<b>950,350</b>	<b>988,503</b>	<b>38,153</b>	<b>4%</b>	<b>1,819,566</b>	<b>1,899,967</b>	<b>80,401</b>	<b>4%</b>	<b>10,683,000</b>	<b>1,734,219</b>	<b>1,899,967</b>	<b>165,748</b>	<b>10%</b>	
<b>EXPENDITURES</b>														
Salaries & Benefits	90,087	103,467	13,381	15%	212,453	202,269	(10,184)	-5%	1,379,423	212,218	202,269	(9,949)	-5%	
Purchase of Water	437,424	445,870	8,446	2%	891,074	914,196	23,122	3%	5,487,000	907,073	914,196	7,123	1%	
WRC Operating Contract	183,767	140,525	(43,242)	-24%	320,435	413,860	93,425	29%	1,765,013	294,169	413,860	119,692	41%	
Maintenance & Operating	166,666	142,248	(24,418)	-15%	420,290	255,070	(165,220)	-39%	1,960,440	326,740	255,070	(71,670)	-22%	
IEPA Loan P&I	-	-	-	0%	-	-	-	0%	428,651	-	-	-	0%	
DWC Loan P&I	-	-	-	0%	-	-	-	0%	58,853	-	-	-	0%	
Capital Outlay	-	-	-	0%	48,581	-	(48,581)	-100%	2,745,225	-	-	-	0%	
<b>Expenditure Totals</b>	<b>877,944</b>	<b>832,111</b>	<b>(45,834)</b>	<b>-5%</b>	<b>1,892,833</b>	<b>1,785,394</b>	<b>(107,438)</b>	<b>-6%</b>	<b>13,824,605</b>	<b>1,740,200</b>	<b>1,785,394</b>	<b>45,194</b>	<b>3%</b>	
<b>Net Increase / (Decrease)</b>	<b>72,405</b>	<b>156,392</b>	<b>83,986</b>		<b>(73,267)</b>	<b>114,572</b>	<b>187,839</b>		<b>(3,141,605)</b>	<b>(5,981)</b>	<b>114,572</b>	<b>120,553</b>		

Village of Carol Stream  
**Capital Budget Summary**  
For the Month Ended June 30, 2016

	MONTH				YTD				BUDGET*		
	Last Year Jun	Current Year Jun	Monthly Variance \$ %		Last Year YTD	Current Year YTD	YTD Variance \$ %		Annual Budget	YTD Actual	% of Total
<b>CAPITAL PROJECTS FUND</b>											
<b>REVENUES</b>											
Capital Grants	\$ 2,954	\$ -	(2,954)	-100%	\$ 2,954	\$ 48,078	45,123	1527%	\$ 772,000	\$ 48,078	6%
Interest Income	617	7,931	7,314	1186%	1,063	15,159	14,096	1326%	25,000	15,159	61%
All Other / Miscellaneous	17,651	1,368	(16,283)	-92%	17,761	22,767	5,006	28%	670,000	22,767	3%
<b>Revenue Totals</b>	<b>21,222</b>	<b>9,299</b>	<b>(11,923)</b>	<b>-56%</b>	<b>21,779</b>	<b>86,003</b>	<b>64,225</b>	<b>295%</b>	<b>1,467,000</b>	<b>86,003</b>	<b>6%</b>
<b>EXPENDITURES</b>											
Roadway Improvements	516,478	1,703,205	1,186,727	230%	1,113,680	2,208,033	1,094,352	98%	6,883,000	2,208,033	32%
Facility Improvements	-	58,668	58,668	100%	-	58,668	58,668	100%	2,150,000	58,668	3%
Stormwater Improvements	-	-	-	0%	-	-	-	0%	627,000	-	0%
Miscellaneous	21	964	943	4600%	82	5,269	5,187	6325%	5,000	5,269	105%
<b>Expenditure Totals</b>	<b>516,499</b>	<b>1,762,836</b>	<b>1,246,338</b>	<b>241%</b>	<b>1,113,762</b>	<b>2,271,969</b>	<b>1,158,207</b>	<b>104%</b>	<b>9,665,000</b>	<b>2,271,969</b>	<b>24%</b>
<b>Net Increase / (Decrease)</b>	<b>(495,277)</b>	<b>(1,753,537)</b>	<b>(1,258,260)</b>	<b>254%</b>	<b>(1,091,983)</b>	<b>(2,185,965)</b>	<b>(1,093,982)</b>	<b>100%</b>	<b>(8,198,000)</b>	<b>(2,185,965)</b>	<b>27%</b>

**MFT FUND**

<b>REVENUES</b>											
Motor Fuel Tax Allotments	\$ 86,719	\$ 89,756	3,036	4%	\$ 179,079	\$ 180,130	1,051	1%	\$ 1,030,000	\$ 180,130	17%
Interest Income	96	1,215	1,119	1162%	164	2,303	2,140	1306%	5,000	2,303	46%
<b>Revenue Totals</b>	<b>86,816</b>	<b>90,971</b>	<b>4,155</b>	<b>5%</b>	<b>179,243</b>	<b>182,434</b>	<b>3,191</b>	<b>2%</b>	<b>1,035,000</b>	<b>\$ 182,434</b>	<b>18%</b>
<b>EXPENDITURES</b>											
Street Resurfacing - Capital	-	-	-	0%	-	-	-	0%	-	-	0%
Crack Filling	-	-	-	0%	-	-	-	0%	142,000	-	0%
Salt	-	-	-	0%	-	-	-	0%	-	-	0%
Electricity	-	-	-	0%	-	-	-	0%	-	-	0%
Materials and Supplies	-	-	-	0%	-	-	-	0%	-	-	0%
<b>Expenditure Totals</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0%</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>0%</b>	<b>142,000</b>	<b>-</b>	<b>0%</b>
<b>Net Increase / (Decrease)</b>	<b>86,816</b>	<b>90,971</b>	<b>4,155</b>	<b>5%</b>	<b>179,243</b>	<b>182,434</b>	<b>3,191</b>	<b>2%</b>	<b>893,000</b>	<b>182,434</b>	<b>20%</b>

\* Due to the uncertainty of timing of various capital improvement projects, no YTD budget estimates are shown.

Village of Carol Stream  
**TIF Funds Budget Summary**  
 For the Month Ended June 30, 2016

	MONTH				YTD				BUDGET				
	Last Year	Current Year	Monthly Variance		Last Year	Current Year	YTD Variance		Annual	YTD	YTD	Variance	
	Jun	Jun	\$	%	YTD	YTD	\$	%	Budget	Budget	Actual	\$	%
<b>GENEVA CROSSING TIF</b>													
<b>REVENUES</b>													
TIF Property Taxes	\$ 190,689	\$ 266,830	76,142	40%	\$ 190,689	\$ 266,830	\$ 76,142	40%	\$ 425,000	\$ 212,500	\$ 266,830	54,330	26%
Interest Income	9	-	(9)	-100%	18	-	(18)	-100%	500	83	-	(83)	-100%
Village Contribution	-	-	-	0%	-	-	-	0%	42,000	42,000	-	(42,000)	-100%
<b>Revenue Totals</b>	<b>190,698</b>	<b>266,830</b>	<b>76,133</b>	<b>40%</b>	<b>190,706</b>	<b>266,830</b>	<b>76,124</b>	<b>40%</b>	<b>467,500</b>	<b>254,583</b>	<b>266,830</b>	<b>12,247</b>	<b>5%</b>
<b>EXPENDITURES</b>													
Principal Retirement	-	-	-	0%	-	-	-	0%	-	-	-	-	0%
Interest Expense	27,240	-	(27,240)	-100%	27,240	-	(27,240)	-100%	-	-	-	-	0%
Paying Agent Fees	-	349	349	100%	-	369	369	100%	830,372	1,000	369	(631)	-63%
<b>Expenditure Totals</b>	<b>27,240</b>	<b>349</b>	<b>(26,892)</b>	<b>-99%</b>	<b>27,240</b>	<b>369</b>	<b>(26,871)</b>	<b>-99%</b>	<b>830,372</b>	<b>1,000</b>	<b>369</b>	<b>(631)</b>	<b>-63%</b>
<b>Net Increase / (Decrease)</b>	<b>163,458</b>	<b>266,482</b>	<b>103,024</b>	<b>63%</b>	<b>163,466</b>	<b>266,461</b>	<b>102,995</b>	<b>63%</b>	<b>(362,872)</b>	<b>253,583</b>	<b>266,461</b>	<b>12,878</b>	<b>5%</b>

**NORTH/SCHMALE TIF**

<b>REVENUES</b>													
TIF Property Taxes	\$ 7,238	\$ 95,498	\$ 88,260	1219%	\$ 7,238	\$ 95,498	\$ 88,260	1219%	\$ 14,000	\$ 7,000	\$ 95,498	\$ 88,498	1264%
Sales Taxes	-	-	-	0%	-	-	-	0%	90,000	30,000	-	(30,000)	-100%
Interest Income	1	18	17	1374%	2	35	33	1604%	100	16	35	19	120%
Village Contribution	-	-	-	0%	-	-	-	0%	2,000	320	-	(320)	-100%
<b>Revenue Totals</b>	<b>7,240</b>	<b>95,516</b>	<b>88,277</b>	<b>1219%</b>	<b>7,241</b>	<b>95,533</b>	<b>88,293</b>	<b>1219%</b>	<b>106,100</b>	<b>37,336</b>	<b>95,533</b>	<b>58,197</b>	<b>156%</b>
<b>EXPENDITURES</b>													
Legal Fees	-	-	-	0%	-	-	-	0%	2,000	334	-	(334)	-100%
Consulting Fees	-	-	-	0%	-	-	-	0%	-	-	-	-	0%
Other Expenses	22,602	65,649	43,047	190%	22,602	65,649	43,047	190%	140,000	70,000	65,649	(4,351)	-6%
<b>Expenditure Totals</b>	<b>22,602</b>	<b>65,649</b>	<b>43,047</b>	<b>190%</b>	<b>22,602</b>	<b>65,649</b>	<b>43,047</b>	<b>190%</b>	<b>142,000</b>	<b>70,334</b>	<b>65,649</b>	<b>(4,685)</b>	<b>-7%</b>
<b>Net Increase / (Decrease)</b>	<b>(15,362)</b>	<b>29,868</b>	<b>45,230</b>		<b>(15,362)</b>	<b>29,884</b>	<b>45,246</b>		<b>(35,900)</b>	<b>(32,998)</b>	<b>29,884</b>	<b>62,882</b>	

Village of Carol Stream  
**Police Pension Fund Budget Summary**  
For the Month Ended June 30, 2016

POLICE PENSION FUND	MONTH				YTD				BUDGET				
	Last Year	Current Year	Monthly Variance		Last Year	Current Year	YTD Variance		Annual	YTD	YTD	Variance	
	Jun	Jun	\$	%	YTD	YTD	\$	%	Budget	Budget	Actual	\$	%
<b>REVENUES</b>													
Investment Income	\$ 68,535	\$ 301,774	233,239	340%	\$ 68,540	\$ 301,911	233,372	340%	\$ 3,300,500	\$ 550,083	\$ 301,911	(248,172)	-45%
Employee Contributions	42,387	41,514	(873)	-2%	106,543	83,299	(23,244)	-22%	572,000	88,000	83,299	(4,701)	-5%
Village Contribution	-	152,761	152,761	100%	142,162	305,523	163,361	115%	1,833,135	305,522	305,523	1	0%
Other Revenues	-	-	-	0%	-	3,109	3,109	100%	-	-	3,109	3,109	100%
<b>Revenue Totals</b>	<b>110,922</b>	<b>496,050</b>	<b>385,128</b>	<b>347%</b>	<b>317,245</b>	<b>693,842</b>	<b>376,597</b>	<b>119%</b>	<b>5,705,635</b>	<b>943,605</b>	<b>693,842</b>	<b>(249,763)</b>	<b>-26%</b>
<b>EXPENDITURES</b>													
Investment and Admin Fees	2,406	9,763	7,357	306%	13,512	18,170	4,658	34%	148,000	24,667	18,170	(6,497)	-26%
Participant Benefit Payments	171,680	195,893	24,213	14%	340,255	387,927	47,672	14%	2,685,500	392,000	387,927	(4,073)	-1%
<b>Expenditure Totals</b>	<b>174,086</b>	<b>205,656</b>	<b>31,570</b>	<b>18%</b>	<b>353,767</b>	<b>406,096</b>	<b>52,329</b>	<b>15%</b>	<b>2,833,500</b>	<b>416,667</b>	<b>406,096</b>	<b>(10,570)</b>	<b>-3%</b>
<b>Net Increase / (Decrease)</b>	<b>(63,164)</b>	<b>290,394</b>	<b>353,558</b>		<b>(36,522)</b>	<b>287,745</b>	<b>324,267</b>		<b>2,872,135</b>	<b>526,939</b>	<b>287,745</b>	<b>(239,193)</b>	

Village of Carol Stream  
**Schedule of Cash and Investment Balances**  
 June 30, 2016

FUND	CASH	INVESTMENTS	TOTAL CASH & INVESTMENTS	LAST YEAR 6/30/2015
GENERAL FUND	\$ 1,157,731.27	\$ 5,186,107.83	\$ 6,343,839.10	\$ 12,882,277.39
WATER & SEWER FUND	1,005,334.21	11,344,955.04	12,350,289.25	13,125,113.61
CAPITAL PROJECTS FUND	-	28,429,053.72	28,429,053.72	22,015,700.50
MFT FUND	-	4,382,838.15	4,382,838.15	3,456,964.58
GENEVA CROSSING TIF FUND	503,330.84	-	503,330.84	1,233,253.61
NORTH/SCHMALE TIF FUND	95,497.95	66,196.68	161,694.63	47,995.21
POLICE PENSION FUND	482,090.53	41,238,042.62	41,720,133.15	41,478,635.16
<b>TOTAL</b>	<u>\$ 3,243,984.80</u>	<u>\$ 90,647,194.04</u>	<u>\$ 93,891,178.84</u>	<u>\$ 94,239,940.06</u>