

# Resolution

## City of Ballwin, Missouri

*INTRODUCED BY*

ALDERMEN TERBROCK, FINLEY, STALLMANN, ROACH, FLEMING, LEAHY, KERLAGON, BULLINGTON

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A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF BALLWIN, MISSOURI, ON BEHALF OF THE CITY, TO EXECUTE AN AGREEMENT WITH K&S ASSOCIATES, INC. FOR CONSTRUCTION OF A NEW CITY HALL.

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WHEREAS, the City reserved a portion of annual revenues and otherwise budgeted for construction of a new City Hall; and

WHEREAS, an RFP was advertised by the City of Ballwin, requesting sealed bids to be submitted; and

WHEREAS, sealed bids were received and opened on March 29, 2018; and

WHEREAS, staff unanimously concluded that K&S Associates, Inc. was the lowest and best bidder for the new City Hall project.

THEREFORE, BE IT RESOLVED by the Board of Aldermen that the Mayor is authorized to execute an agreement, attached hereto, with K&S Associated, Inc. for construction of a new City Hall.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
**TIM POGUE, MAYOR**

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
**TIM POGUE, MAYOR**

**ATTEST:** \_\_\_\_\_

**ERIC HANSON, CITY ADMINISTRATOR**





# AIA<sup>®</sup> Document A201<sup>™</sup> – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

City of Ballwin, Missouri  
City Hall Project  
77 Seven Trails Drive  
Ballwin, MO 63011

### THE OWNER:

*(Name, legal status and address)*

The City of Ballwin, Missouri  
14811 Manchester Road  
Ballwin, MO 63011

### THE ARCHITECT:

*(Name, legal status and address)*

Chiodini Architects  
1401 S. Brentwood Blvd.  
Studio 575  
St. Louis, MO 63144

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## ***General Conditions of the Contract for Construction***

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 BASIC DEFINITIONS**

##### **§ 1.1.1 THE CONTRACT DOCUMENTS**

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

#### **ADDITIONS AND DELETIONS:**

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

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

### § 1.1.7 DESIGN DOCUMENTS

Design Documents are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the designers under their respective employment or professional services agreements. Design Documents 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 SITE

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.

### § 1.1.10 PUNCH LIST

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.

### § 1.1.11 FLOAT

Float – Float is a measurement of time indicating how late any activity or group of activities in a schedule can be completed without impacting the critical path and the scheduled end date of the Project. Float belongs to the Project and is not for the exclusive use of the Contractor.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

## § 1.3 CAPITALIZATION

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

## § 1.4 INTERPRETATION

*(Paragraph deleted)*

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

§ 1.4.2 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 Special Conditions

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## 4 General Conditions

Drawings shall control over Specifications, and details in drawings shall control over large-scale drawings.

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

§ 1.5.1 Provided all payments have been made to Architect in accordance with its agreement with Owner, the Design Documents are the Owner's exclusive property. The Owner owns all copyrights in and to the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Design Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's reserved rights.

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Design Documents 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 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 trade permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics and legal limitations, and any available 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 other than utility locates, which the Contractor must confirm on its own including by use of the One Call system, and shall in all instances exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and

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relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

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

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

### **§ 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, or such shorter time as may be reasonable under the circumstances, 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. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Design Documents. The Contractor acknowledges any such rights, claims, or causes of action accrue against the Architect and Contractor may see redress from Architect in the event that becomes necessary.

### **§ 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 pursuant to Section 3.2 before commencing Work at the Site and at frequent intervals during its progress.

**§ 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.



§ 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 Referenced Standards 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 or Referenced Standards, 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.

*(Paragraphs deleted)*

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

§ 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.

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## § 3.4 LABOR AND MATERIALS

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. 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 must provide a full warranty for the project for a period of one (1) year from substantial completion. The project specifications may require additional warranties for specific materials, labor, and equipment in addition to the one (1) year project warranty. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be free from defects, and will be performed with the standard of care, skill, and expertise ordinarily used by other members of contractor's profession in performing similar services Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor 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 general warranty or any additional or special warranties required by the Contract Documents.

§ 3.5.3 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

## § 3.6 TAXES

§ 3.6.1 The Owner enjoys tax exempt status as a city. 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

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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.

**§3.6.4** The Contractor shall pay sales, consumer, use and similar taxes, including unemployment compensation taxes, for the Work provided by the Contractor.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for trade permits and fees 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 knowingly or negligently performs Work that is in violation of applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4** 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.

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

### **§ 3.8 ALLOWANCES**

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

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

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

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

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

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The 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. The superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

**§ 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 execution of the Contract, shall prepare and submit for the Owner's and Architect's approval, Contractor's baseline construction schedule for the Work. The schedule shall not exceed time limits 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 of the execution of 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, Current 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. The Contractor shall display a Current Construction Schedule at the Site for reference and reliance by the Owner and Architect. 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.

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design



professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall 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.

### § 3.13 USE OF SITE

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

§ 3.13.2 Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

### § 3.14 CUTTING AND PATCHING

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

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

### § 3.15 WORKING HOURS AND CLEANING UP

§ 3.15.1 Work will be performed in accordance with the Contract Documents and applicable building codes and other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or other City/County, State or federal holiday without the written consent of the Owner, given after prior written notice to the Architect and any other applicable consultants; such consent, if given, may be conditioned upon payment by the Contractor of the Owner's, Architect's and any other applicable consultants' additional costs and fees, testing or regulatory agency costs incurred in monitoring such off-hours Work. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of an emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent and person responsible for the protection of persons and property at the Site and compliance with all applicable laws and regulations, if different from the superintendent.

§ 3.15.2 The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. 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.

*(Paragraphs deleted)*

**§ 3.15.3** 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 indemnify, defend, and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The 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, Contractor and Architect. Consent shall not be unreasonably withheld.

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

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

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



§ 4.2.2 The Architect will visit the Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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.

#### § 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; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The 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.

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or 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, within thirty (30) days 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. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed.

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations

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and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## § 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

## § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

### § 7.2 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 **Change Proposals.** 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 that is proposed to be added, deleted, or changed and must include

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any adjustment which the Contractor believes to be necessary in the Contract Sum or 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, and additional bond cost. 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. If the Contractor is directed to proceed with the proposed Change on a Time and Material basis (T&M), the Contractor shall have the Owner's Representative sign daily tickets for the work until it is complete. The Change Order for that T&M work must be issued to the Owner's Representative for review and approval within 30 calendar days of the completion of the work. Additionally, all outstanding Change Order requests that the Contractor is seeking payment for must be submitted for review by the date of Substantial Completion so that all Change Orders can be reviewed and considered prior to Final Completion. Any requests submitted after this deadline may be subject to denial. See Exhibit D, entitled Modifications / Explanations or the Change Order Fee, which shall govern and apply to Change Orders.

**§ 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 Directive is a written order prepared by the Architect and signed by the Owner and Architect (after having been approved in writing by the Owner) 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 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. The City Administrator has the discretion to approve Change Orders up to the aggregate amount of the Contract's budgeted contingency. Notwithstanding the foregoing, the City Administrator may refer any change order to the Owner's legislative body for Approval. Any requested change in excess of the Contract Sum shall require a Contract Modification approved in writing by the Owner.

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

**§ 7.3.3** If the Construction 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 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 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 Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the method and the adjustment on the basis of reasonable expenditures

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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.

**§ 7.3.9** Pending final determination of the total cost of a Construction Directive to the Owner, the Contractor may request payment for Work completed under the Construction 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 Directive.

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

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

### **ARTICLE 8 TIME, PROGRESS, DELAYS AND EXTENTIONS**

#### **§ 8.1 DEFINITIONS**

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

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

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

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

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

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the 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, or prior approval of Certificates of Insurance, and Additional Insured

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Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Contract. 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.

**§ 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 (NOT THE FAULT OF CONTRACTOR) AND EXTENSIONS OF TIME**

**§ 8.3.1** Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused by conditions that could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor, or anyone for whose acts the Contractor is responsible. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers. Excusable delays may justify an extension of the Contract Time, but there shall be no compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:

- .1 weather delays as further defined in Section 8.3.6;
- .2 acts of government and regulatory agencies and officials (other than the Owner in its capacity as Owner);
- .3 catastrophic events such as fire, flood and unavoidable casualties; and
- .4 strikes or labor disputes.

**§ 8.3.2** Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the

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Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).

**§ 8.3.3** Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

**§ 8.3.4** The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than five (5) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the five (5) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

**§ 8.3.5** The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 a written detailed statement of the reasons and causes for the delay;
- .2 inclusive dates of the delay;
- .3 specific trades and portions of the Work affected by the delay;
- .4 status of Work affected before commencement of the delay;
- .5 effect of the delay on available Float;
- .6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule; and
- .7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible, including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

**§ 8.3.6** In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusually severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and

- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

Upon acknowledgement of the Notices to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days included in AIA 101 – 2007 Section 3.5 and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time but not the Contract Sum.

**§ 8.3.7** To be considered as the basis for an excusable delay, strikes or labor disputes must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

**§ 8.3.8** Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused Float available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule that minimizes the adverse effects of the delay.

**§ 8.3.9** No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

**§ 8.3.10** The Contractor will not receive any compensation for profit, additional bond cost, overhead (which includes extended office overhead and site-specific overhead and general conditions), or any other cost or compensation or any other damages of any kind or nature whatsoever whether incurred by the Contractor, its Subcontractor or suppliers for delay, all of which are irrevocably waived by Contractor where the delay results from performance of additional Work (Change Order or Construction Directive) beyond the Work required by the Contract Documents and for which the Contractor is paid for the additional Work.

**§ 8.3.11** The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order. Work for which the Contractor is not otherwise compensated in an amount not to exceed the lesser of (i) a daily rate computed by dividing eight percent (8%) of the original Contract Sum by the original Contract Time or (ii) a daily rate computed by dividing the Contractor's profit, bond cost and site-specific overhead (but not home office overhead)

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for the original Contract Sum by the original Contract Time. The Contractor for itself and its Subcontractors and suppliers, irrevocably waives any and all other compensation and delay damages as a result of any compensable delays, including without limitations any claims for any indirect cost and any claims for loss of productivity or loss of efficiency.

**§ 8.3.12** In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

**§ 8.3.13** Delay damages.

- .1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;
- .2 No charges or claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the Owner, its agents, employees or consultants, (ii) Contract Documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable time extensions for completion of the Work;
- .3 The provisions of the Section 8.3.13.1 and Section 8.3.13.2 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond costs (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for critical path delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner (except when acting as a regulatory authority) or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and
- .4 A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

*(Paragraphs deleted)*

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

## **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.

#### **§ 9.1.1**

Payments made to the Contractor by the Owner under this Contract shall be as specified in the contract. Contractor shall provide the Owner with information necessary to facilitate same.



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

## § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Architect and Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application for Payment.

*(Paragraph deleted)*

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

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

§ 9.3.2 The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.3 Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

§ 9.3.4 Under applicable provisions of Missouri law, payments received by the Contractor are held in trust for Subcontractors and suppliers who have furnished labor and materials covered by an Application for Payment. Accordingly, Applications for Payment may not include requests for payment of amounts for Work performed by a Subcontractor or Supplier that the Contractor does not intend to pay for said work.

§ 9.3.5 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Contract retainage of five percent (5%). The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

**§ 9.3.6** 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. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

**§ 9.3.7** Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under Section 14.2 of the Contract. Contractor shall submit Applications for Payment to Architect on a monthly basis or as otherwise specified in the Contract Documents. Once the Architect submits a completed Application for Payment with its Certificate of Payment to the Owner, the Owner within twenty-one (21) days after its receipt of a Request for Payment from the Architect, shall pay the approved amount contained in the Request for Payment to the Contractor.

*(Paragraphs deleted)*

#### **§ 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 made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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

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

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

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

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and 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

If the Owner does not pay the Contractor within sixty (60) days after the Contractor submits an Application for Payment to the Architect, the Contractor may file a claim in accordance with Article 15 of this Contract.

## § 9.8 SUBSTANTIAL COMPLETION

**§ 9.8.10 Notice and Request for Preliminary Inspection** When the Contractor considers that the Work is substantially complete and that items remaining to be completed or corrected can be accomplished within another thirty (30) days, subject to the availability of special order parts and materials, the Contractor must give written notice to the Owner and the Architect and request an inspection of the Work as provided in Section 9.8.3. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected before final Completion and the submittals required by Section 9.8.2. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

**§ 9.8.20 Submittals on Substantial Completion** In addition to the Punch List, the Contractor must submit the following with its request for a determination of Substantial Completion:

- .1 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;

- .2 Fire Marshall's report;
- .3 approvals from, and transfer documents for, all utilities;
- .4 Warranties and Guarantees as provided in this Contract;
- .5 final, approved operating and maintenance manuals;
- .6 all documents and verification of training required by the Contract; and
- .7 Schedule to complete the Punch List and value of Work not yet complete.

**§ 9.8.3 0 Substantial Completion Inspection and Correction** Upon receipt of the Punch List, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete and whether remaining items can be completed or corrected within thirty (30) days, subject to the availability of special order parts and materials. The Owner may make a similar inspection. If such inspection discloses any item, whether or not included on the Punch List, which, in the opinion of the Owner or the Architect, (i) must be completed or corrected before the Work can be occupied or used for its intended purpose, or (ii) cannot be completed or corrected within thirty (30) days, subject to the availability of special order parts and materials, the Architect will so advise the Contractor, and the Contractor must promptly complete or correct such item.

**§ 9.8.4 F0 Reinspection** Following the inspection and completion or correction of Work required by the Owner or the Architect before issuance of a Certificate of Substantial Completion, the Contractor must notify the Owner and Architect and request another inspection by the Owner and the Architect to determine Substantial Completion. The Contractor must submit a revised Punch List with such notice. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is substantially 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 Substantially Complete.

**§ 9.8.5 0 Certification of Substantial Completion** When the Owner and the Architect concur that the Work is Substantially Complete and that Work remaining to be completed or corrected can be accomplished within a period of thirty (30) days, subject to the availability of special order parts and materials, the Architect will prepare a Certificate of Substantial Completion and a revised Punch List. The Certificate of Substantial Completion will fix the Date of Substantial Completion and the time periods within which the Contractor must finish all items on the Punch List accompanying the Certificate.

**§ 9.8.60 Execution and Acceptance of Certificate** The Certificate of Substantial Completion and accompanying Punch List must be submitted to the Owner and Contractor for execution, which will constitute their written acceptance of responsibilities assigned to them in such Certificate.

**§ 9.8.70 Conditions of Substantial Completion** To the extent provided in the Contract Documents or in the Certificate of Substantial Completion, the Owner, upon execution of the Certificate, will assume responsibility for security, operation, safety, maintenance, heat, utilities, damage to the Work (other than damage caused by the Contractor) and insurance.

**§ 9.8.8 0 Commencement of Warranties** Warranties required by the Contract Documents will commence on the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

**§ 9.8.90 Delivery of Premises and Access to Work** Upon execution of the Certificate of Substantial Completion, the Contractor will deliver custody and control of such Work to the Owner. The Owner will thereafter provide the Contractor reasonable access to such Work to permit the Contractor to fulfill the correction, completion and other responsibilities remaining under the Contract and the Certificate of Substantial Completion.

**§ 9.8.10 0 Timing of Final Completion** Unless otherwise provided in the Certificate of Substantial Completion, the Contractor must complete or correct all items included in the final Punch List within thirty (30) days, subject to the availability of special order parts and materials, after the Date of Substantial Completion.

**§ 9.8.11 0 Broom Clean** At the time of Substantial Completion, in addition to removing rubbish and leaving the building "broom clean," the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC

filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

### § 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

*(Paragraphs deleted)*

§ 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 in strict accordance with the 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 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 AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or 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 AIA Document G706A, 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;

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- .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;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.1 and return of Contract Documents as provided therein; and
- .10 attic stock items as required by the Contract Documents; and
- .11 as applicable, documentation of approval by the Metropolitan St. Louis Sewer District of all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. MSD approval will be based on satisfying all MSD Permit requirements including the submission of acceptable as-built SWM drawings and other required SWM documents.

*(Paragraphs deleted)*

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

**§ 10.2.1** The Contractor must take reasonable precautions for the safety of, and must 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 other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein or otherwise utilized in the performance of the Contract, 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 and not designated for removal, relocation or replacement in the course of construction including but not limited to City streets.

**§ 10.2.2** The Contractor must implement and maintain compliance with, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction (without limitation OSHA and the State of Missouri), manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ 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** The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.

**§ 10.2.5** When explosives or other hazardous materials or equipment are stored or used or unusual methods are employed in the performance of the Work, the Contractor must exercise utmost care and conduct such activities under supervision of properly qualified personnel.



**§ 10.2.6** If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.

**§ 10.2.7** The Contractor must promptly remedy, at its sole cost and expense, damage and loss 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, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

**§ 10.2.8** The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

**§ 10.2.9** 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.

*(Paragraphs deleted)*

**§ 10.2.10** 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 as soon as possible. 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. In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Contract), and the Contractor's reasonable precautions will be inadequate to prevent foreseeable damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and the Architect, in writing, within 24 hours of discovery.

**§ 10.3.2** Upon receipt of notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

**§ 10.3.3** If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon



the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

**§ 10.3.4** The Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Contract. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless giving rise to the request for the change and must fully comply with Articles 7, 8, and 15 or any claim will be deemed waived by the Contractor.

**§ 10.3.5** 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.

**§ 10.3.6** 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.

**§ 10.3.7** 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 jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

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- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

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

**§ 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.

*(Paragraphs deleted)*

#### **§ 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** The Owner shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form as required by Section 10.1.2 (e) of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor. Such coverage shall be 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, to the extent commercially available and without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, tornadoes or other windstorms, 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.

*(Paragraph deleted)*

**§ 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** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

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

§ 11.3.4 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 Contractor may, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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

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

### § 11.3.7 WAIVERS OF SUBROGATION

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

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

*(Paragraphs deleted)*

### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall provide performance and payment bonds as required by Section 10.2 of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

*(Paragraphs deleted)*

## 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, upon written authorization from the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

#### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

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

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

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

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



### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by, and construed in accordance with, the laws of the State of Missouri without regard to its conflict of laws provisions.

### § 13.2 SUCCESSORS AND ASSIGNS

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party may 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.

*(Paragraphs deleted)*

### § 13.3 WRITTEN NOTICE

Written notices are to be provided to the representatives of the parties designated in this Contract. Written notices are deemed to have been duly served if delivered in person to the addressee for whom it was intended, or if delivered by overnight courier or by mail or email. The date of any notice is deemed to be the earlier of the date of personal delivery or the delivery by overnight courier. Claims must be delivered by certified mail or courier with proof of delivery.

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

§ 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 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.

§ 13.5.7 In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

#### § 13.6 Deleted

#### § 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 time period specified by applicable law.

#### § 13.8 DOCUMENT RETENTION AND AUDIT PROVISIONS

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.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 TERMINATION BY THE CONTRACTOR

*(Paragraphs deleted)*

##### §14.1.1 NO RIGHT TO STOP WORK FOR NON-PAYMENT

The Contractor 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.

#### § 14.2 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
- .7 Endangers the performance of this Contract.

14.2.2 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, the termination for default is effective on the date specified in the Owner's written notice. 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

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other remedies provided by law or the Contract, the Contractor must compensate the Owner for additional costs that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, 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** 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 and County, participate in an inspection of the Work with the Owner, County 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** Following written notice from the Owner of termination, the Owner may:

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 accept assignment of subcontracts and purchase orders, and
- .3 complete the Work by whatever reasonable method the Owner may deem expedient.

**§ 14.2.5** Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.

**§ 14.2.6** When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

**§ 14.2.7** 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 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.

**§ 14.2.8** In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

*(Paragraphs deleted)*

**§14.2.9** 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 accepts that Owner shall petition the Bankruptcy Court to lift the Automatic Stay and 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 include profit. No adjustment shall be made to the extent

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

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

**14.4.1** The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

**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 and the Architect/Engineer 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 therefor.

**14.4.3** Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

**14.4.4** 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 terminating the following contracts including:
  - (i.) 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;
  - (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs; and
- .6 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 unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. 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 14.4.4 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 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 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.

**14.4.5** 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.

*(Paragraphs deleted)*

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

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

#### **§ 15.1.2 NOTICE OF CLAIMS**

Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential claim shall also explore all options and generate suggestions for how to avoid or overcome the impact of the circumstances. If damage cannot be avoided, Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Prior to Substantial Completion, Claims by either party should be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, but failure to meet such deadlines shall not be deemed waiver of a Claim absent prejudice to the other party.. Notice of Claims shall be given by certified mail or courier with proof of delivery.

#### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

#### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

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

#### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

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

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of construction. **§ 15.2 INITIAL DECISION**

*(Paragraphs deleted)*

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

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject to Dispute Resolution pursuant to Section 6.2 of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

*(Paragraphs deleted)*

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

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

### § 15.3 MEDIATION

§ 15.3.1 The parties shall endeavor to resolve by mediation any Claims, dispute, or other matter in question or arising out of or related to the Contract. The parties shall share the mediator's fee and any filing fees equally. The parties will bear their own attorneys' fees, expert witnesses' fees, costs and expenses in the mediation. The mediator shall be an attorney selected by the parties from the United States Arbitration and Mediation (USA&M), and the mediation shall be held at USA&M's offices in St. Louis, Missouri, at a time and date to be decided, unless another mediator or location mutually agreed upon. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

§ 15.3.2 In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses (including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).

*(Paragraph deleted)*

### § 15.4 DISPUTE RESOLUTION

§ 15.4.1 Any Claim, dispute, or other matter in question or arising out of or related to the Contract that is not resolved by the determination of the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 shall be mediated as provided in Section 15.3 thereof. If either party so desires, or if mediation fails to resolve the dispute, the dispute may be resolved by litigation.

In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses

Init.



(including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).

*(Paragraphs deleted)*



Init.

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

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City of Ballwin, Missouri  
City Hall Project  
77 Seven Trails Drive  
Ballwin, MO 63011

...

*(Name, legal status and address)*  
The City of Ballwin, Missouri  
14811 Manchester Road  
Ballwin, MO 63011

...

*(Name, legal status and address)*  
Chiodini Architects  
1401 S. Brentwood Blvd.  
Studio 575  
St. Louis, MO 63144

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...

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

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#### **§ 1.1.7 INSTRUMENTS OF SERVICE DESIGN DOCUMENTS**

~~Instruments of Service Design Documents~~ 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 designers under their respective employment or professional services agreements. Instruments of Service Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

...

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 SITE**

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.

#### **§ 1.1.10 PUNCH LIST**

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.

#### **§ 1.1.11 FLOAT**

Float – Float is a measurement of time indicating how late any activity or group of activities in a schedule can be completed without impacting the critical path and the scheduled end date of the Project. Float belongs to the Project and is not for the exclusive use of the Contractor.

...

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

**§ 1.4.2** 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 Special Conditions
- .4 General Conditions

Drawings shall control over Specifications, and details in drawings shall control over large-scale drawings.

**§ 1.5**

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

~~§ 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. Provided all payments have been made to Architect in accordance with its agreement with Owner, the Design Documents are the Owner's exclusive property. The Owner owns all copyrights in and to the Design Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Design Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' Owner's reserved rights.~~

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

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If the parties intend to transmit ~~Instruments of Service~~ Design Documents 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.

...

~~§ 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.~~

...

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

**§ 2.2.3** The Owner shall furnish surveys describing physical ~~characteristics, legal limitations and characteristics and legal limitations, and any available~~ utility locations for the site of the Project, and a legal description of the ~~site.~~ Site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner ~~but shall other than utility locates, which the Contractor must confirm on its own including by use of the One Call system, and shall in all instances~~ exercise proper precautions relating to the safe performance of the Work.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the ~~Owner~~ Owner, or such shorter time as may be reasonable under the circumstances, 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.

...

**§ 3.1.3** 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. The Contractor waives any rights, claims, or causes of action against Owner as a result of activities or duties of the Architect in the Architect's administration of the Contract or representations made by the Architect in the Design Documents. The Contractor acknowledges any such rights, claims, or causes of action accrue against the Architect and Contractor may see redress from Architect in the event that becomes necessary.

...

**§ 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 pursuant to Section 3.2 before commencing Work at the Site and at frequent intervals during its progress.

**§ 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.

**§ 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 Referenced Standards 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 or Referenced Standards, 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.

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

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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 shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

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

~~§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall 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.~~

~~§ 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 Section 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.~~

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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.~~

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The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. 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 must provide a full warranty for the project for a period of one (1) year from substantial completion. The project specifications may require additional warranties for specific materials, labor, and equipment in addition to the one (1) year project warranty. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be free from defects, and will be performed with the standard of care, skill, and expertise ordinarily used by other members of contractor's profession in performing similar services Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§3.5.2 The Contractor's general warranty and any additional or special warranties are not limited by the Contractor's obligations to specifically correct defective or nonconforming Work as provided in Article 12, nor 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 general warranty or any additional or special warranties required by the Contract Documents.

§3.5.3 The Contractor must furnish all special warranties required by the Contract Documents to the Owner no later than Substantial Completion. The Owner may require additional special warranties in connection with the approval of "Or-Equals" or Substitutions, Allowance items, Work that is defective or nonconforming, or the acceptance of nonconforming Work pursuant to Article 12.

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

§ 3.6.1 The Owner enjoys tax exempt status as a city. 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.

§3.6.4 The Contractor shall pay sales, consumer, use and similar taxes, including unemployment compensation taxes, for the Work provided by the Contractor.

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**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for ~~the building permit trade permits and fees~~ 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.

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

**§ 3.7.4** ~~Concealed or Unknown Conditions.~~ If the Contractor encounters conditions at the ~~site~~ 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 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.

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**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The 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. The superintendent must be fluent in all languages necessary to effectively communicate with Contractor's staff assigned to the Project, and with all Subcontractors, in order to supervise and direct the Work and assist emergency responders.

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**§ 3.10.1** The Contractor, ~~promptly after being awarded within twenty-one (21) days of execution of~~ the Contract, shall prepare and submit for the Owner's and Architect's ~~information a Contractor's approval, Contractor's baseline~~ 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 after being awarded within twenty-one (21) days of the execution of~~ 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.



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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Current 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. The Contractor shall display a Current Construction Schedule at the Site for reference and reliance by the Owner and Architect. 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.

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

...

**§ 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.

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

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

**§ 3.13.2** Except as may be specifically provided in the Contract Documents, the Contractor shall provide all necessary temporary facilities, including power, water, sanitation, scaffolding, storage, and security. If Owner makes any such facilities available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

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### **§ 3.15 WORKING HOURS AND CLEANING UP**

**§ 3.15.1** Work will be performed in accordance with the Contract Documents and applicable building codes and other applicable law governing the Contractor's performance of the Work. No delays resulting from compliance with applicable laws or regulations may form the basis for any claim by the Contractor for delay damages or additional compensation or for any extensions of the Contract Time. The Contractor must not permit work outside of hours established in the Contract Documents on a Saturday, Sunday or other City/County, State or federal holiday without the written consent of the Owner, given after prior written notice to the Architect and any other applicable consultants; such consent, if given, may be conditioned upon payment by the Contractor of the Owner's, Architect's and any other applicable consultants' additional costs and fees, testing or regulatory agency costs incurred in monitoring such off-hours Work. The Contractor must notify the Owner as soon as possible if Work must be performed outside such times in the interest of the safety and protection of persons or property at the Site or adjacent thereto, or in the event of an emergency. In no event shall the Contractor permit Work to be performed at the Site without the presence of the Contractor's superintendent and person responsible for the protection of persons and property at the Site and compliance with all applicable laws and regulations, if different from the superintendent.

§ 3.15.2 The Contractor must keep the Site and adjacent areas free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis, and must keep tools, construction equipment, machinery and surplus materials suitably stored when not in use. If the Contractor fails to do so in a manner reasonably satisfactory to the Owner or the Architect within forty-eight (48) hours after notice or as otherwise required by the Contract Documents, the Owner may clean the Site and back charge the Contractor for all costs associated with the cleaning. 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 CLEANING UP~~

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

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

~~§ 3.15.3 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.~~

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

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~~§ 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.~~

...

~~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. 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.~~

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~~§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as seen as practicable within thirty (30) days 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. The Contractor shall update this list throughout the Project and keep Owner and the Architect advised of any new Subcontractors employed.

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**§ 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 met all criteria set forth in the Contract Documents and 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.

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**§ 7.2.2 Change Proposals.** 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 that is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in the Contract Sum or 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, and additional bond cost. 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. If the Contractor is directed to proceed with the proposed Change on a Time and Material basis (T&M), the Contractor shall have the Owner's Representative sign daily tickets for the work until it is complete. The Change Order for that T&M work must be issued to the Owner's Representative for review and approval within 30 calendar days of the completion of the work. Additionally, all outstanding Change Order requests that the Contractor is seeking payment for must be submitted for review by the date of Substantial Completion so that all Change Orders can be reviewed and considered prior to Final Completion. Any requests submitted after this deadline may be subject to denial. See Exhibit D, entitled Modifications / Explanations or the Change Order Fee, which shall govern and apply to Change Orders.

**§ 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.

**§ 7.3.1** A Construction Change-Directive is a written order prepared by the Architect and signed by the Owner and Architect, Architect (after having been approved in writing by the Owner) 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. The City Administrator has the discretion to approve Change Orders up to the aggregate amount of the Contract's budgeted contingency. Notwithstanding the foregoing, the City Administrator may refer any change order to the Owner's legislative body for Approval. Any requested change in excess of the Contract Sum shall require a Contract Modification approved in writing by the Owner.

**§ 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:

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§ 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.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and 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:

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§ 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.

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## **ARTICLE 8 TIME**

### **ARTICLE 8 TIME, PROGRESS, DELAYS AND EXTENTIONS**

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§ 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~~-Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor ~~and Owner~~ and Owner, or prior approval of Certificates of Insurance, and Additional Insured Endorsement and Notice of Cancellation Endorsement required to be submitted to Owner under the Contract. 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.

§ 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 DELAYS (NOT THE FAULT OF CONTRACTOR) AND EXTENSIONS OF TIME

§ 8.3.1 Excusable delays are delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused by conditions that could not reasonably be anticipated by, are beyond the control of, and are without the fault or negligence of the Owner, as set forth in Section 8.3.2, the Contractor, or anyone for whose acts the Contractor is responsible. Excusable delays do not include any delays caused in whole or in part by any Subcontractors, Sub-subcontractors or suppliers. Excusable delays may justify an extension of the Contract Time, but there shall be no compensation whatsoever for excusable delays. Excusable delays may, but do not necessarily, include:

- .1 weather delays as further defined in Section 8.3.6;
- .2 acts of government and regulatory agencies and officials (other than the Owner in its capacity as Owner);
- .3 catastrophic events such as fire, flood and unavoidable casualties; and
- .4 strikes or labor disputes.

§ 8.3.2 Compensable delays are limited to delays in the progress of the Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time, which are caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law).



§ 8.3.3 Unexcused delays are delays in Work which at the time of the delays were critical path activities as shown on the most recently approved Construction Schedule and which prevent the Contractor from achieving Substantial Completion before the expiration of the Contract Time and which are not excusable delays or compensable delays. No increase in the Contract Sum or extension of the Contract Time will be made for an unexcused delay.

§ 8.3.4 The Contractor must provide written notice of any actual or prospective delay promptly, and in no event later than five (5) days after the occurrence of the event giving rise to such delay. The notice must be given to the Owner and Architect within the specified time. In the case of a continuing delay, the Contractor must provide an initial notice and a further notice at each progress meeting throughout the duration of the delay. The notice must contain all of the specific information required in Section 8.3.5. The Contractor's failure to provide the written notice containing the information specified in Section 8.3.5 within the five (5) days prescribed above will be conclusively deemed a waiver of any claim for delay arising from such occurrence.

§ 8.3.5 The Contractor's notice must identify those portions of the Construction Schedule affected by the delay and must include an estimate of the cost and probable effect of the delay, if any, on the progress of the Work. Supporting documentation must include, but is not limited to:

- .1 a written detailed statement of the reasons and causes for the delay;
- .2 inclusive dates of the delay;
- .3 specific trades and portions of the Work affected by the delay;
- .4 status of Work affected before commencement of the delay;
- .5 effect of the delay on available Float;
- .6 a critical path method (CPM) analysis demonstrating that the delay has affected an activity then on the critical path at the time of the occurrence of the delay as shown on the most recently approved Construction Schedule; and
- .7 if the Contractor claims that the delay is an excusable delay or compensable delay, evidence that the delay was unforeseeable, beyond the Contractor's control, and without the fault or negligence of the Contractor or the negligence of anyone for whose acts the Contractor is responsible, including any Subcontractor, Sub-subcontractor or supplier; and in the case of a compensable delay, was caused solely and exclusively by the acts or omissions of the Owner (excepting actions taken by the Owner to protect the public health or safety or to conform to law) or anyone for whose acts the Owner is responsible, and which are unreasonable under the circumstances involved and not reasonably within the contemplation of the parties.

§ 8.3.6 In order for the Contractor to be entitled to an extension of the Contract Time for unusually severe weather, the following conditions must be satisfied:

- .1 The weather experienced at the Site during the Contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the Project location during any given month;
- .2 The unusually severe weather must delay Work which at the time of the unusually severe weather was a critical path activity as shown on the most recently approved Construction Schedule and which prevents the Contractor from achieving Substantial Completion before expiration of the Contract Time. The delay must be beyond the control and without the fault or negligence of the Contractor. For example, the impacted critical activity must not have occurred during unusually severe weather due to previous unexcused delays; and
- .3 The Contractor must have provided written notice of the weather-related delay complying with Sections 8.3.4 and 8.3.5 above.

Upon acknowledgement of the Notices to Proceed and continuing throughout the Contract, the Contractor must record on the daily superintendent report the occurrence of adverse weather and resultant impact to normally scheduled Work. Actual adverse weather delay days must prevent Work on critical path activities for fifty (50) percent or more of the Contractor's scheduled workday. The number of actual adverse weather delays must include Contractor's scheduled workdays impacted by actual adverse weather (even if the adverse weather occurred in the previous month), be calculated chronologically from the first to the last day each month, and be recorded as full days. If the Contractor has complied with Sections 8.3.4 and 8.3.5 and the provisions of this Section 8.3.6 and the number of actual adverse weather delay workdays exceeds the number of days included in AIA 101 – 2007 Section 3.5 and have adversely affected critical path weather-dependent activities, the Contractor is entitled to a Modification of the Contract Time but not the Contract Sum.

§ 8.3.7 To be considered as the basis for an excusable delay, strikes or labor disputes must be documented by data evidencing (i) the trades directly and indirectly involved in or affected by the strike or labor dispute, (ii) reasons for the strike or labor dispute, (iii) the onset and duration of the strike or labor dispute, and (iv) the measures taken by the Contractor to avoid or overcome the effects of any delay.

§ 8.3.8 Upon receipt of a notice from the Contractor of the occurrence of a delay complying with Sections 8.3.4 and 8.3.5 (and if applicable 8.3.6 and 8.3.7), the Owner will review the most recently approved Construction Schedule to determine (i) whether the delay is in fact an excusable or compensable delay, and (ii) whether any adverse effects of the delay can be overcome by an adjustment in the Construction Schedule, including the application of any unused Float available in the schedule. The Owner may require the Contractor to submit a more detailed Construction Schedule than previously required in order to permit the Owner to evaluate the delay. Based on such review, the Contractor must, if required by the Owner, submit for the Owner's approval a revised Construction Schedule that minimizes the adverse effects of the delay.

§ 8.3.9 No extension of the Contract Time or increase in the Contract Sum will be allowed for any delay or part thereof occurring more than ten (10) days before written notice of the delay is provided by the Contractor. No extension of the Contract Time or increase in the Contract Sum will be made to the extent that performance is, was or would have been suspended, delayed, or interrupted by another cause for which the Contractor is responsible. No increase in the Contract Sum will be made to the extent performance was or would have been suspended, delayed or interrupted by another cause for which the Owner is not solely and exclusively responsible.

§ 8.3.10 The Contractor will not receive any compensation for profit, additional bond cost, overhead (which includes extended office overhead and site-specific overhead and general conditions), or any other cost or compensation or any other damages of any kind or nature whatsoever whether incurred by the Contractor, its Subcontractor or suppliers for delay, all of which are irrevocably waived by Contractor where the delay results from performance of additional Work (Change Order or Construction Directive) beyond the Work required by the Contract Documents and for which the Contractor is paid for the additional Work.

§ 8.3.11 The Contractor acknowledges and agrees that the profit, additional bond cost and overhead (which includes extended office overhead and site-specific overhead and general conditions) if any, incurred by the Contractor in performing work beyond the Work required by the Contract Documents and any and all other costs, compensation or damages due Contractor (including any of its Subcontractors or suppliers), is included in, and payable to the Contractor as part of the Change Order or Construction Directive. Contractor waives any and all other damages and cost of any nature or kind whatsoever including claims for local and cumulative impacts as a result of such Change Order or Construction Directive Work and any and all other claims of any type or nature whatsoever including any claim for loss of productivity or loss of efficiency. The Contractor will be compensated for compensable delays only for actual and direct damages resulting from such compensable delays. Actual direct damages are limited to site specific general conditions and do not include any indirect costs such as home office overhead. The Contractor will be compensated for such actual and direct damages for compensable delays not attributable to performance of Change Order. Work for which the Contractor is not otherwise compensated in an amount not to exceed the lesser of (i) a daily rate computed by dividing eight percent (8%) of the original Contract Sum by the original Contract Time or (ii) a daily rate computed by dividing the Contractor's profit, bond cost and site-specific overhead (but not home office overhead) for the original Contract Sum by the original Contract Time. The Contractor for itself and its Subcontractors and suppliers, irrevocably waives any and all other compensation and delay damages as a result of any compensable delays, including without limitations any claims for any indirect cost and any claims for loss of productivity or loss of efficiency.

§ 8.3.12 In the event the Owner denies the Contractor's request for a change in the Contract Time or, in the case of a compensable delay, a change in the Contract Sum, the Contractor may, within ten (10) days after such denial, submit a Claim as provided in Article 15. Submissions made prior to the denial must be resubmitted after the denial. Any Claim on account of denial of a change that is not made within such ten (10) days of the denial is deemed waived.

§ 8.3.13 Delay damages.

.1 By executing a Change Order or Contract Amendment, the Contractor represents that the Contractor is not entitled to an increase in the Contract Sum or an extension of the Contract Time beyond that specified in the Change Order or Contract Amendment for the Work performed or to be performed under the Change Order. The Contractor is not entitled to an increase in the Contract Sum or extension of the Contract Time as a result of the issuance by the Owner of Construction Directive unless the Contractor asserts a claim as required by this Article 8 and Article 15;

.2 No charges or claims for damages may be made by the Contractor or paid to the Contractor for any delay, disruption, inefficiency, interference or hindrance from any cause whatsoever, whether foreseeable or not, including (i) acts or omissions by the Owner, its agents, employees or consultants, (ii) Contract Documents that are negligently prepared or contain inaccurate statements, or (iii) force majeure and circumstances beyond the Contractor's control. The sole remedy for delays, disruptions or hindrances will be non-compensable time extensions for completion of the Work;

.3 The provisions of the Section 8.3.13.1 and Section 8.3.13.2 do not apply to claims that meet all of the following conditions: (i) the claim arises under the Contract; (ii) the claim is limited to actual and direct damages (i.e. profit, additional bond costs (if any) and overhead (only site-specific overhead and not including home office overhead)) incurred as a result of a delay in completing the Project which the Contractor acknowledges are fully compensated for by payment of the adjustment amount specified in Section 8.3.11; (iii) the Contract establishes a time limit for achieving Substantial Completion and the claim is for critical path delays that prevent achievement of Substantial Completion of the Contract within that time limit; (iv) the delay for which damages are claimed is caused solely and exclusively by the Owner (except when acting as a regulatory authority) or anyone for whom they are responsible; (v) the delay is not caused by actions taken by the Owner to protect the public health or safety or to conform to law; and (vi) the Contractor has fully complied with Sections 8.3.4 and 8.3.5; and

.4 A time extension may be granted only for an excusable delay that is beyond the Contractor's control and occurs without the Contractor's fault or negligence. No time extension will be granted in the absence of a written claim for the time extension complying with Sections 8.3.4 and 8.3.5 (and if applicable, 8.3.6 and 8.3.7).

§ 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.

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

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

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

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§ 9.1.1

Payments made to the Contractor by the Owner under this Contract shall be as specified in the contract. Contractor shall provide the Owner with information necessary to facilitate same.

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§ 9.3.1 The Contractor must submit to the Architect itemized Applications for Payment for Work completed on a monthly basis in accordance with a schedule approved by the Owner. Each Application for Payment must be consistent with the approved Schedule of Values. In order to expedite the review and approval of Applications for Payment, the Contractor may submit to and review with the Architect and Owner a draft Application for Payment at a progress meeting prior to submitting a formal Application 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, and shall reflect retainage if provided for in the Contract Documents.~~

...

§ 9.3.2 The form of Application for Payment must be AIA Document G702, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet (latest edition), or such other form as may be prescribed by the Owner. The application must be notarized and supported by sufficient data to demonstrate the Contractor's right to payment and compliance with the payment provisions of the Contract to the satisfaction of the Owner and Architect, such as copies of requisitions from Subcontractors and material suppliers, partial lien waivers, releases and other documents. Each Application for Payment must reflect approved Contract Modifications and the Contract retainage provided for in the Contract Documents.

§ 9.3.3 Applications for Payment may include materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. The Owner has no obligation or responsibility to pay for materials stored off the Site. If specifically approved in writing in advance by the Owner, an Application for Payment may include materials and equipment stored off the Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Site is conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to protect the Owner's interests. Payment for materials and equipment stored off the Site will, in addition, be conditioned upon the Contractor's provision of applicable insurance, storage and transportation to the Site.

§ 9.3.4 Under applicable provisions of Missouri law, payments received by the Contractor are held in trust for Subcontractors and suppliers who have furnished labor and materials covered by an Application for Payment. Accordingly, Applications for Payment may not include requests for payment of amounts for Work performed by a Subcontractor or Supplier that the Contractor does not intend to pay for said work.

§ 9.3.5 Until the conditions set forth in this Section have been satisfied by Contractor, the amount of each monthly Application for Payment must include the value of each line item as indicated on the approved Schedule of Values, to the extent completed, less Contract retainage of five percent (5%). The retainage will not be paid to the Contractor until thirty (30) days after all of the following conditions have been satisfied: (A) the Contractor has fully performed the Contract; (B) the Contractor has completed all Punch List items to the satisfaction of the Owner and the Architect; (C) the Contractor has delivered to the Owner all Project close-out documents in duplicate, including (1) all maintenance and operating manuals; (2) marked sets of as-built drawings; (3) all guarantees and warranties required under the Contract Documents; (4) a list of names, addresses, and telephone numbers for all subcontractors and others providing guarantees and warranties; and (D) the applicable governmental authorities have issued to the Owner the final use and occupancy permit for the Project.

§ 9.3.6 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. By submitting an Application for Payment, the Contractor further warrants that all Work for which payments have previously been received from the Owner are free and clear of liens, claims, security



interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities having provided labor, materials and equipment relating to the Work.

**§ 9.3.7** Before the Contractor receives a progress payment, the Contractor must certify in writing that, in accordance with contractual arrangements, Subcontractors and suppliers:

- .1 have been paid from the proceeds of previous progress payments; and
- .2 will be paid in a timely manner from the proceeds of the progress payment currently due.

In the event the Contractor has not paid or does not pay as certified, such failure constitutes a ground for termination under Section 14.2 of the Contract. Contractor shall submit Applications for Payment to Architect on a monthly basis or as otherwise specified in the Contract Documents. Once the Architect submits a completed Application for Payment with its Certificate of Payment to the Owner, the Owner within twenty-one (21) days after its receipt of a Request for Payment from the Architect, shall pay the approved amount contained in the Request for Payment to the Contractor.

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

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

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**§ 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.~~

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**§ 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. sixty (60) days after the Contractor submits an Application for Payment to the Architect, the Contractor may file a claim in accordance with Article 15 of this Contract.

...

**§ 9.8.10 Notice and Request for Preliminary Inspection** ~~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.~~

When the Contractor considers that the Work is substantially complete and that items remaining to be completed or corrected can be accomplished within another thirty (30) days, subject to the availability of special order parts and materials, the Contractor must give written notice to the Owner and the Architect and request an inspection of the Work as provided in Section 9.8.3. The Contractor's notice and request for an inspection must be accompanied by a comprehensive Punch List describing all items to be completed or corrected before final Completion and the submittals required by Section 9.8.2. The Contractor must proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents.

**§ 9.8.20 Submittals on Substantial Completion** ~~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.~~

In addition to the Punch List, the Contractor must submit the following with its request for a determination of Substantial Completion:

- .1 final test reports as required by the Contract and certificates of inspection and approval required for use and occupancy;
- .2 Fire Marshall's report;
- .3 approvals from, and transfer documents for, all utilities;
- .4 Warranties and Guarantees as provided in this Contract;
- .5 final, approved operating and maintenance manuals;
- .6 all documents and verification of training required by the Contract; and
- .7 Schedule to complete the Punch List and value of Work not yet complete.

**§ 9.8.30 Substantial Completion Inspection and Correction** ~~Upon receipt of the Contractor's list, Punch List, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's complete and whether remaining items can be completed or corrected within thirty (30) days, subject to the availability of special order parts and materials. The Owner may make a similar inspection. If such inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.~~

Punch List, which, in the opinion of the Owner or the Architect, (i) must be completed or corrected before the Work can be occupied or used for its intended purpose, or (ii) cannot be completed or corrected within thirty (30) days, subject to the availability of special order parts and materials, the Architect will so advise the Contractor, and the Contractor must promptly complete or correct such item.

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

**FO Reinspection** Following the inspection and completion or correction of Work required by the Owner or the Architect before issuance of a Certificate of Substantial Completion, the Contractor must notify the Owner and Architect and request another inspection by the Owner and the Architect to determine Substantial Completion. The Contractor must submit a revised Punch List with such notice. The Architect will promptly notify the Contractor if the Owner or the Architect do not concur that the Work is substantially 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 Substantially Complete.

**§ 9.8.5** **0 Certification of Substantial Completion** 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. When the Owner and the Architect concur that the Work is Substantially Complete and that Work remaining to be completed or corrected can be accomplished within a period of thirty (30) days, subject to the availability of special order parts and materials, the Architect will prepare a Certificate of Substantial Completion and a revised Punch List. The Certificate of Substantial Completion will fix the Date of Substantial Completion and the time periods within which the Contractor must finish all items on the Punch List accompanying the Certificate.

**§ 9.8.6** **0 Execution and Acceptance of Certificate** The Certificate of Substantial Completion and accompanying Punch List must be submitted to the Owner and Contractor for execution, which will constitute their written acceptance of responsibilities assigned to them in such Certificate.

**§ 9.8.7** **0 Conditions of Substantial Completion** To the extent provided in the Contract Documents or in the Certificate of Substantial Completion, the Owner, upon execution of the Certificate, will assume responsibility for security, operation, safety, maintenance, heat, utilities, damage to the Work (other than damage caused by the Contractor) and insurance.

**§ 9.8.8** **0 Commencement of Warranties** Warranties required by the Contract Documents will commence on the Date of Substantial Completion of the Work unless otherwise provided in the Certificate of Substantial Completion or the Contract Documents.

**§ 9.8.9** **0 Delivery of Premises and Access to Work** Upon execution of the Certificate of Substantial Completion, the Contractor will deliver custody and control of such Work to the Owner. The Owner will thereafter provide the Contractor reasonable access to such Work to permit the Contractor to fulfill the correction, completion and other responsibilities remaining under the Contract and the Certificate of Substantial Completion.

**§ 9.8.10** **0 Timing of Final Completion** Unless otherwise provided in the Certificate of Substantial Completion, the Contractor must complete or correct all items included in the final Punch List within thirty (30) days, subject to the availability of special order parts and materials, after the Date of Substantial Completion.

**§ 9.8.11** **0 Broom Clean** At the time of Substantial Completion, in addition to removing rubbish and leaving the building "broom clean," the Contractor must replace any broken or damaged materials, remove stains, spots, marks and dirt from decorated Work, clean all fixtures, vacuum all carpets and wet mop all other floors, replace HVAC filters, clean HVAC coils, and comply with such additional requirements, if any, which may be specified in the Contract Documents.

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**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information

and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

**§9.10.1** 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 in strict accordance with the 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. 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 AIA Document G706, Affidavit of Payment of Debts and Claims (latest edition) or 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 AIA Document G706A, 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;
- .8 all warranties and bonds required by the Contract Documents;
- .9 Record Documents as provided in Section 3.11 and return of Contract Documents as provided therein; and
- .10 attic stock items as required by the Contract Documents; and
- .11 as applicable, documentation of approval by the Metropolitan St. Louis Sewer District of all Storm Water Management (SWM) work as to allow closeout of the SWM Permit. MSD approval will be based on satisfying all MSD Permit requirements including the submission of acceptable as-built SWM drawings and other required SWM documents.

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

- .1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 — failure of the Work to comply with the requirements of the Contract Documents; or
- .3 — terms of special warranties required by the Contract Documents.

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

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**§ 10.2.1** The Contractor must take reasonable precautions for the safety of, and must 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 other operations of the Contractor;
- .2 the Work and materials and equipment to be incorporated therein or otherwise utilized in the performance of the Contract, 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 and not designated for removal, relocation or replacement in the course of construction including but not limited to City streets.

**§ 10.2.2** The Contractor must implement and maintain compliance with, as required by the Contract Documents, applicable laws and regulations and orders of public authorities having jurisdiction (without limitation OSHA and the State of Missouri), manufacturers' instructions or recommendations, existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including issuing appropriate notices, distributing material safety data sheets and other hazard communication information, providing protective clothing and equipment, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.



§ 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 The Contractor must not load nor permit any part of any structure at the Site to be loaded or subjected to stresses or pressures so as to endanger its safety or that of adjacent structures or property.

§ 10.2.5 When explosives or other hazardous materials or equipment are stored or used or unusual methods are employed in the performance of the Work, the Contractor must exercise utmost care and conduct such activities under supervision of properly qualified personnel.

§ 10.2.6 If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of any of the Owner's employees or agents, or of others for whose acts it is contended that the Owner is liable, written notice of such injury or damage, whether or not insured, must be given to the Owner within a reasonable time not exceeding ten (10) days after the onset or occurrence of such damage or injury or such shorter time as may be required by the Occupational Safety Hazards Administration (OSHA). The notice must provide sufficient detail to enable the Owner to investigate the matter. If notice is not received by the Owner within the time specified, any claim arising from the occurrence will be deemed to be conclusively waived, except to the extent of any applicable insurance (excluding self-insurance) coverage covering such occurrence. The provisions of this Section may not be used by the Contractor in lieu of the requirements of Article 7 when the Contractor is seeking an adjustment in the Contract Sum and are in addition to the requirements of Article 8 when the Contractor is seeking an adjustment in the Contract Time.

§ 10.2.7 The Contractor must promptly remedy, at its sole cost and expense, damage and loss 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, unless otherwise instructed in writing by the Owner. This obligation is in addition to, and not in limitation of, the Contractor's obligations for indemnification under Section 3.18 and the Contractor's responsibility to repair and or replace that portion of the Work and any materials and equipment to be incorporated therein which are damaged as a result of criminal mischief as specified in Section 10.2.10.

§ 10.2.8 The Contractor is responsible for taking all reasonable and necessary precautions to secure and protect the Site, the Work, materials and equipment to be incorporated therein, and any tools or equipment of the Contractor necessary or beneficial to the performance of the Work from damage due to vandalism, theft, or other criminal mischief. The Contractor must repair and/or replace that portion of the work and any materials or equipment to be incorporated therein and any tools or equipment of the Contractor necessary or beneficial to performance of the Work which are damaged or stolen due to vandalism, theft or any other criminal mischief at its expense whether or not covered by insurance. No extension of the Contract Time or increase in the Contract Sum will be granted to the Contractor as a consequence of any delay, impacts or inefficiencies resulting from any act of vandalism, theft or other criminal mischief whether or not caused or contributed to by the Contractor's negligence.

§ 10.2.9 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.

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

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

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



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

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

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

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

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

#### ~~§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY~~

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

~~§ 10.2.10~~ 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 as soon as possible. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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~~§ 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 In the event the Contractor encounters on the Site material reasonably believed to be a Hazardous Material (other than those for which the Contractor may have specific responsibility for remediation under the Contract), and the Contractor's 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 damage or injury and the Contractor cannot proceed with the Work in the absence of the removal, containment or remediation of the Hazardous Material, the Contractor must immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. the Architect, in writing, within 24 hours of discovery.

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

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

notice of suspected Hazardous Materials, Owner will cause an investigation to be made to verify the presence and extent of such materials, to determine whether such materials are in fact hazardous, and the steps necessary for their removal, containment or remediation.

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

If the Owner's investigation confirms the presence of Hazardous Materials which present a risk of injury or damage which will not be adequately protected against by the Contractor's reasonable precautions, then the Work in the affected area must not thereafter be resumed except at the written direction of the Owner. The Work in the affected area will be resumed promptly (i) in the absence of a finding of Hazardous Material by the Owner, (ii) upon the removal, containment or remediation of the Hazardous Materials, or (iii) upon the establishment of appropriate safety precautions.

~~§ 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.~~

Contractor may request a change in the Contract Sum or Contract Time if the Contractor incurs additional costs on account of or is delayed by the need to remove, contain or remediate Hazardous Materials which has not been rendered harmless at the Site unless the Contractor is responsible for same under the Contract. Any such requested change in the Contract Sum or Contract Time must be made in writing within ten (10) days of discovery of any Hazardous Materials, which has not been rendered harmless giving rise to the request for the change and must fully comply with Articles 7, 8, and 15 or any claim will be deemed waived by the Contractor.

~~§ 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. 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.~~

~~§ 10.3.6 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. 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.~~

~~§ 10.3.7 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.~~

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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

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~~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.~~

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

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

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

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

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

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

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

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

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~~§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, The Owner shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form as required by Section 10.1.2 (e) of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor. Such coverage shall be 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, to the extent commercially available and without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, tornadoes or other windstorms, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.~~



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

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~~§ 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, Contractor may, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

...

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.~~ Work. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

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

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

§ 11.4.1 The Contractor shall provide performance and payment bonds as required by Section 10.2 of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.



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

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

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~~§ 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, upon written authorization from the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.~~

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

...

~~§ 12.2.3 The one-year period for correction of Work shall ~~not~~be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.~~

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~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4, by, and construed in accordance with, the laws of the State of Missouri without regard to its conflict of laws provisions.~~

...

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

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

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

~~Written notice shall be notices are to be provided to the representatives of the parties designated in this Contract. Written notices are 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. addressee for whom it was intended, or if delivered by overnight courier or by mail or email. The date of any notice is~~

deemed to be the earlier of the date of personal delivery or the delivery by overnight courier. Claims must be delivered by certified mail or courier with proof of delivery.

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

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**§ 13.5.7** In addition to the tests required by this Section 13.5, the Owner may at any time arrange for other tests, inspections and specific approvals to be performed by others selected by the Owner, at the Owner's expense. The Contractor must cooperate with the Owner and provide access to the Work for such tests, inspections and approvals.

### **§ 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.~~~~Deleted~~

...

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.~~time period specified by applicable law.

### **§ 13.8 DOCUMENT RETENTION AND AUDIT PROVISIONS**

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.

...

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

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

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

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

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

#### **§14.1.1 NO RIGHT TO STOP WORK FOR NON-PAYMENT**

The Contractor 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.

**14.2.1** 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
- .7 Endangers the performance of this Contract.

**14.2.2** 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, the termination for default is effective on the date specified in the Owner's written notice. 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 that foreseeably would be incurred by the Owner, whether the costs are actually incurred or not, 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.

**§ 14.2.1** ~~The Owner may terminate the Contract if the Contractor~~**14.2.3** Upon receipt of written notice from the Owner of termination, the Contractor must:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials; cease operations as directed by the Owner in the notice and, if required by the Owner and County, participate in an inspection of the Work with the Owner, County 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 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors; 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** Following written notice from the Owner of termination, the Owner may:

- .1 take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
  - .2 accept assignment of subcontracts and purchase orders, and
  - .3 complete the Work by whatever reasonable method the Owner may deem expedient.
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or **§ 14.2.5** Upon termination for cause, the Contractor must take those actions described in Section 14.2.3, and the Owner may take those actions described in Section 14.2.4, subject to the prior rights of the Contractor's Surety.
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents. **§ 14.2.6** When the Owner terminates the Contract for cause, the Contractor is not entitled to receive further payment until the Work is completed and the costs of completion have been established.

**§ 14.2.7** 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 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.

**§ 14.2.8** In completing the Work following termination for cause, the Owner is not required to solicit competitive bids or to award completion work to the lowest bidder, but may obtain such completion work and related services on the basis of sole source procurement and negotiated compensation.

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

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

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

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



§14.2.9 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 accepts that Owner shall petition the Bankruptcy Court to lift the Automatic Stay and permit Owner to terminate the Contract.

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14.4.1 The Owner may, at any time, terminate the Contract or any portion thereof or of the Work for the Owner's convenience and without cause.

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 and the Architect/Engineer 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 therefor.

14.4.3 Following written notice from the Owner of termination, the Owner may:

- .1 Take possession of the Site and of all materials and equipment thereon, and at the Owner's option, such temporary facilities, tools, construction equipment and machinery thereon owned or rented by the Contractor that the Owner elects to utilize in completing the Work;
- .2 Accept assignment of subcontracts and purchase orders; and
- .3 Complete the Work by whatever reasonable method the Owner may deem expedient.

14.4.4 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 terminating the following contracts including:
  - (i.) 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;
  - (ii.) Equipment rental contracts if not terminable at no cost but not to exceed an amount equal to thirty (30) days rental;
- .4 Documented transportation costs associated with removing Contractor-owned equipment;
- .5 Documented demobilization and close-out costs; and
- .6 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 unless the employee is under a written employment contract entitling the employee to continued employment after termination of the Contract and the employee cannot be assigned to other work provided that in all events the Contractor's costs must be limited to thirty (30) days of employment costs from the date of the notice of termination. 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 14.4.4 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 14.4.4.1, 14.4.4.2, 14.4.4.3 and 14.4.4.4 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.

14.4.5 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.

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

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

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

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

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

...

Notice of circumstances that could give rise to a Claim must be given to the other party as soon as possible, to enable that party to take action as appropriate to lessen the impact of the potential Claim. The party recognizing a potential claim shall also explore all options and generate suggestions for how to avoid or overcome the impact of the circumstances. If damage cannot be avoided, Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Prior to Substantial Completion, Claims by either party ~~must~~ should be initiated within ~~21~~ ten (10) days after occurrence of the event giving rise to such Claim or within ~~21~~ ten (10) days after the claimant first recognizes the condition giving rise to the Claim, whichever is ~~later~~, later, but failure to meet such deadlines shall not be deemed waiver of a Claim absent prejudice to the other party. Notice of Claims shall be given by certified mail or courier with proof of delivery.

...

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

...

§ 15.1.5.2 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~~

**critical path of construction.** § 15.2 INITIAL DECISION

**§ 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.

**§ 15.2 INITIAL DECISION**

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

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§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be ~~final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution~~ subject to Dispute Resolution pursuant to Section 6.2 of the executed AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor.

~~§ 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.~~

...

~~§ 15.3.1 Claims, disputes, or other matters in controversy~~ The parties shall endeavor to resolve by mediation any Claims, dispute, or other matter in question or 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~~ Contract. The parties shall share the mediator's fee and any filing fees equally. The parties will bear their own attorneys' fees, expert witnesses' fees, costs and expenses in the mediation. The mediator shall be an attorney selected by the parties from the United States Arbitration and Mediation (USA&M), and the mediation shall be held at USA&M's offices in St. Louis, Missouri, at a time and date to be decided, unless another mediator or location mutually agreed upon. Mediation is not a condition precedent to commencing litigation, but if litigation is commenced before mediation is held, the Parties agree to mediate before any dispositive motions or trial.

~~§ 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. In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses (including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).~~

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

#### **§ 15.4 ARBITRATION/**~~DISPUTE~~ RESOLUTION

~~§ 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. Any Claim, dispute, or other matter in question or arising out of or related to the Contract that is not resolved by the determination of the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 shall be mediated as provided in Section 15.3 thereof. If either party so desires, or if mediation fails to resolve the dispute, the dispute may be resolved by litigation.~~

~~In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses (including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).~~

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

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

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

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

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

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

~~§ 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, Christopher L. Chiodini, 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 17:27:26 on 04/04/2018 under Order No. 2470750616 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)*





# AIA<sup>®</sup> Document A101<sup>™</sup> – 2007

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

**AGREEMENT** made as of the 9th day of April in the year 2018  
*(In words, indicate day, month and year.)*

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

The City of Ballwin, Missouri  
14811 Manchester Road  
Ballwin, MO 63011

and the Contractor:

K&S Associates, Inc.  
516 Hanley Industrial Ct.  
St. Louis, MO 63144

*(Name, legal status, address and other information)*

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

City of Ballwin, Missouri  
City Hall Project  
77 Seven Trails Drive  
Ballwin, MO 63011

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

Chiodini Architects  
1401 S. Brentwood Blvd.  
Studio 575  
St. Louis, MO 63144

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

AIA Document A201<sup>™</sup>-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.

Init.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS
10	INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be fixed in a notice to proceed issued by the Owner.  
(Paragraphs deleted)

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than (309) Calendar days from the notice to proceed, issued by the Owner, and subject to any time extensions permitted hereunder for excusable delays or Owner requested changes.

§ 3.4 Contractor understands that time is of the essence for the Owner as to the deadlines set forth in this Contract, that Owner will be harmed if Contractor fails to complete the Project in a timely manner, that precise quantification of damages for such harm would be difficult, and the amounts specified herein as Liquidated Damages for delay are reasonable. Contractor shall be responsible to maintain scheduled items for the Contractor's Work as shown in the Contract Documents. In the event that the Contractor does not substantially complete the Work, and accepted bid alternates by the required Substantial Completion date, Contractor agrees to pay the Owner, or to deduct from the Contract Sum, not as a penalty, but as liquidated damages, the amount of \$1,500 for each and every calendar day that Substantial Completion is delayed.

§ 3.5 The Contractor shall also include within the stated calendar days in Section 3.3 above an allowance of twenty (20) work days for delays due to weather. Contractor shall reference AIA 201 Section 8.3.6 for the number of adverse weather days that must be included in the contractual calendar days.  
(Table deleted)

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User Notes:

(2053853516)

(Paragraphs deleted)

§ 3.6 If Contractor shall neglect, refuse, or fail to complete the remaining work and closeout documents within 30 days after Substantial Completion (including any proper extension granted by Owner), Contractor shall pay the Owner the stipulated sum of Five Hundred Dollars (\$500) for each day that expires after the time specified for completion and readiness for final payment.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Million Seven Hundred Eighty Five Thousand Dollars ( \$2,785,000 ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

Base Bid:	\$2,667,000.00
Payment and Performance Bond:	\$23,000.00
Alternate No. 1: Sidewalks	\$56,000.00
Alternate No. 2: Exterior Lighting	\$39,500.00
Alternate No. 3: Ballistic / Bullet Proof Wall	\$4,200.00
Alternate No. 6: (DEDUCT) Dumpster Enclosure	\$(10,700.00)
Alternate No. 8: (3) Flagpoles	\$6,000.00

The Owner reserves the right to accept the following alternates through the change order process post execution of this agreement for the amounts below. This contractor will advise the Owner on when these decisions need to be made in order to not delay the project. Contractor must hold prices for these alternates until that time.:

Alternate No. 4: Landscaping, Sod, Seed, Irrigation	\$53,000.00
Alternate No. 5: (DEDUCT) Moisture Mitigation	\$(21,000.00)
Alternate No. 7: 2" Mill and Overlay Existing Parking Lot	\$19,000.00
Alternate No. 9: Fire Hydrant and Valve along 7 Trails Dr.	\$17,600.00

§ 4.3 Unit prices, if any:  
See bid documents for full description of unit prices.

Item	Units and Limitations	Price Per Unit (\$0.00)
Unit Price No. 1: Removal of unsuitable soils and import & compaction of suitable soils.	Per Cubic Yard	\$33
Unit Price No. 2: Treatment of on-site unsatisfactory soils.	Per Cubic Yard	\$21
Unit Price No. 3: Removal and haul-off of rippable rock.	Per Cubic Yard	\$33
Unit Price No. 4: Removal and haul-off of non-rippable rock.	Per Cubic Yard	\$38
Unit Price No. 5: Removal and haul-off of trench rock.	Per Cubic Yard	\$192

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Unit Price No. 6: Removal and disposal of existing buried concrete man-made structures.	Per Cubic Yard	\$60
Unit Price No. 7: Removal of unsuitable soils, haul-off, and placement of lean concrete for soil remediation.	Per Cubic Yard	\$165
Unit Price No. 8: Load and haul-off of surplus soils.	Per Cubic Yard	\$17
Unit Price No. 9: Soil import and placement and compaction.	Per Cubic Yard	\$15
Unit Price No. 10: 1" clean rock placement and compaction	Per Cubic Yard	\$31
Unit Price No. 11: 1" minus rock placement and compaction	Per Cubic Yard	\$21
Unit Price No. 12: 2" clean rock placement and compaction	Per Cubic Yard	\$28
Unit Price No. 13: 2" minus rock placement and compaction	Per Cubic Yard	\$21
Unit Price No. 14: Topsoil place and final grade	Per Cubic Yard	\$40
Unit Price No. 15: Removal of unsuitable soils, haul-off, and import & compaction of 1" granular material per Geotech recommendations	Per Cubic Yard	\$38

**§ 4.4 Allowances included in the Contract Sum, if any:**  
*(Paragraph deleted)*

Item	Price
Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017. Replace with lean concrete. A total of 85 cubic yards of material at \$165/CY.	\$14,025.00
Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017. Replace with low plastic soil or 1 inch minus crushed limestone. A total of 100 cubic yards of material at \$34.75/CY.	\$3,475.00
Existing Fill Remediation per pages 2-3 of the SCI geotechnical report dated April 20, 2017. Remove and recompact existing fill. A total of 1700 cubic yards of material at \$6.60/CY.	\$11,220.00

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§ 4.5 Neither the Contract Sum nor any reimbursables shall include any sales, use or property taxes as the Owner is exempt from paying such taxes.

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect and Owner's Representative not later than the 20th day of the invoicing month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. Any dispute regarding setting the schedule shall be resolved as provided herein. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Applications for Payments shall be submitted on AIA Documents G732 and G703. In the event of a dispute with regard to any item included in an Application for Payment, the Owner shall make payment for items not in dispute and shall have the right to withhold from payment the amount of such disputed item while the parties attempt to resolve the dispute in accordance with the dispute resolution provisions provided for in the Contract Documents.

Such applications shall include:

- Certified Payrolls, An original accounting of all labor rates and hours of Work
- Invoices for all materials, rental equipment, and Contractor's statements.
- Copies of Contractor's daily log
- Compliance with prevailing wage laws as per annual wage order issued with this contract
- If invoicing for stored materials that have not been delivered to the project site, the following must be provided: proof of stored materials including certificate of insurance for facility where materials are stored, photographs of such materials, materials are labeled with signs indicating materials are "Property of the City of Ballwin, MO" and copies of invoices for materials from the vendors/supplier.

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

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall



be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent ( 5 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

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

#### § 5.1.8

*(Paragraphs deleted)*

**Deleted.**

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

### § 5.2 FINAL PAYMENT

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

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 The Contractor has completed all punchlist items to the satisfaction of the Owner’s Representative, Architect and Owner.
- .4 The Contractor has delivered all closeout Documentation required under the Contractor Documents, which include (1) original- final release of claims from Contractor (AIA G706 and G706A), in triplicate- operation and maintenance instructions/manuals; (1) original of final certified payrolls from Contractor and all lower tier’d subcontractor’s, (1) original affidavit of compliance with prevailing wage laws from contractor and all lower tier’d subcontractor’s, schedules, in triplicate-guarantees, and in triplicate-warranties, in triplicate certificates of inspections, including, in triplicate equipment manuals, in triplicate marked up record documents, and in triplicate other closeout documents reasonably required by Owner.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 INITIAL DECISION MAKER

The Architect will serve as the Owner’s Initial Decision Maker pursuant to Section 15.2 of AIA Document

*(Paragraphs deleted)*

A201–2007.

## § 6.2 DISPUTE RESOLUTION

Any Claim, dispute, or other matter in question or arising out of or related to the Contract that is not resolved by the determination of the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 shall be mediated as provided in Section 15.3 thereof. If either party so desires, or if mediation fails to resolve the dispute, the dispute may be resolved by litigation.

*(Paragraphs deleted)*

In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses (including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 Payments due and unpaid under the Contract shall bear 9% interest from the date payment is due.  
*(Paragraphs deleted)*

### § 8.3 Party Representatives

§ 8.3.1 The Owner has retained Navigate Building Solutions, LLC as its Construction Manager for the project. The Contractor shall cooperate with the Construction Manager's Representative to the same extent as the Owner.

§ 8.3.2 The Contractor's representative:  
*(Name, address and other information)*

Thomas Kraska, President  
K&S Associates Inc

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

### § 8.4

*(Paragraphs deleted)*

#### Compliance with Laws:

§ 8.4.1 The Contractor shall comply with all local, state, and federal laws, rules, and regulations applicable to the provision of services and products under the Contract, including but not limited to: the Americans with Disabilities Act, employment discrimination laws, wage and hour laws (including as required by Sections 290.210 *et seq.* R.S.Mo.), the transient employer financial assurance law (Sections 285.230 *et seq.* RSMo.), and public contracting laws. The Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by the Contractor is either current or under lawful protest with the applicable taxing jurisdiction.

§ 8.4.2 Not less than the prevailing hourly rate of wages specified under Section 290.210-290.340 of the Revised Missouri Statutes and set out in the Wage Determination shall be paid to all workers performing Work under this Contract. The Contractor shall forfeit as provided in Section 290.250 of the Revised Missouri Statutes as a penalty to the Owner the sum of One Hundred Dollars (\$100.00) for each worker employed, for each calendar day, or portion

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thereof, that such worker is paid less than the prevailing rate for any work done under said Contract by the Contractor or by any of its Subcontractors.

**§ 8.4.3** The Contractor and all subcontractors to the contract must require all on-site employees to complete the ten-hour safety training program required under Section 292.675, RSMo, if they have not previously completed the program and have documentation of having done so. The Contractor will forfeit a penalty to the Owner of \$2500 plus an additional \$100 for each employee employed by the Contractor or Subcontractor, for the calendar day, or portion thereof, such employee is employed without the required training.

**§ 8.4.4** Every transient employer, as defined in Section 285.230, RsMo, must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) The notice of registration of employer withholding issued to such transient employer by the director of revenue; (2) Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and (3) The notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with these requirements shall, under section 285.234, RsMo, be liable for a penalty of Five Hundred Dollars (\$500.00) per day until the notices required by this section are posted as required by that statute.

### **§ 8.5 Certified Payroll**

**§ 8.5.1** The Contractor & each Subcontractor are required to submit, WEEKLY, ONE (1) Certified ORIGINAL for each week that work is in progress & SHOULD BE NUMBERED SEQUENTIALLY. If work is temporarily suspended, the last payroll should be appropriately marked to note that it would be the last payroll until work is resumed. Submitter shall make sure that each payroll is numbered and dated, includes the name of the Project on it as well as the name of the Subcontractor. It is important that submitter number ALL payrolls sequentially. This will keep Contractor from having to send "No Work" payrolls when no hours are logged for a pay period. It will also make it easier to track and communicate any inconsistencies. Submitter shall label each of the "Final Payrolls" from each contractor/subcontractor as such.

**§ 8.5.2** The Contractor must submit one (1) certified originals of each weekly payroll within 7 days of the payment date of the payroll. The certification may be attached to the payroll or may be on the payroll itself. The Contractor will be considered responsible for submittal of payrolls and certifications for all their sub recipients on the project. The certification must be properly signed originals. Electronic submittal of certified payrolls is not permitted. Failure to submit these payrolls within the 7-day period will result in delay in submittal of pay applications. All certified payrolls must be certified by an officer of the company only. Contractor cannot certify several pay periods with only one payroll certification. This is unacceptable to the Department of Labor. Each certification must also be dated and signed to be valid. Owner would prefer that the certification be signed in a color other than black. Owner can accept Xeroxed payrolls; however, the certifications must each be signed with an original, live signature. THE OWNER CANNOT ACCEPT COPIED SIGNATURES ON THE PAYROLL CERTIFICATIONS.

The employee's full name must be used. Addresses are not optional and MUST be listed on publicly funded projects such as this one. Social Security numbers are no longer allowed on certified payrolls, however, in lieu of the Social Security number; the contractor must assign the employee an identification number and place that identification number on the certified payroll. The identification number can be the last four digits of the employee's Social Security number. Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for labor standards compliance. All deductions must be clearly identified. Only approved deductions should be used in wage rate calculations as per the Code of Federal Regulations. The US Department of Labor Form LS-57 may be used, as this form complies with all code requirements. If any part of the payroll or payroll certification is illegible or not completely filled out, they will be returned to your office for correction and re-submission. IMPORTANT NOTE: APPRENTICE CERTIFICATION LETTERS MUST ACCOMPANY CERTIFIED PAYROLLS THE 1ST TIME THEIR NAME APPEARS ON A CERTIFIED PAYROLL-IF NOT ATTACHED IT WILL DELAY APPROVAL OF CERTIFIED PAYROLL, AND THEREFORE PAY APPLICATION SUBMISSION.

**§ 8.5.3** Unauthorized Alien Act Compliance and Federal Work Authorization Program Enrollment - No business or entity involved with this project shall employ an unauthorized alien to perform work within the state of Missouri. As

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a condition for the award of any contract or grant in excess of \$5,000.00, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program (for example, the so called Federal E-Verify Program) with respect to the employees working in connection with the contracted services (see section 285.530 RSMo, enclosed in the laws section). To reaffirm - All Contractors are required to obtain and make available for inspection by the contracting public body from each subcontractor of any tier, an original sworn affidavit which affirms, under penalty of perjury, that the subcontractor is enrolled & actively participating in a federal work authorization program, that the subcontractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and the subcontractor's employees are lawfully present in the United States. The Contractor shall comply with all applicable federal, state & local labor laws & is not knowingly in violation of §RSMo 285.530(1) and shall not henceforth be in such violation. This shall appear in contracts between the general contractor and subcontractors and contracts between subcontractors of any tier.

### **§ 8.6 Liability and Indemnity:**

**§ 8.6.1** In no event shall the Owner be liable to the Contractor for special, indirect, or consequential damages, except those caused by the Owner's willful misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the Owner shall be limited to the amount of money to be paid by the Owner under this Contract.

**§ 8.6.2** The Contractor shall defend, indemnify, and hold harmless the Owner, its elected or appointed officials, Architect, Owner's Representative, and their respective consultants, agents, and employees, from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of or connected with, this Contract, or the work of any subcontract hereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including but not limited to claims for personal injuries, death, or property damage (other than the Work itself), regardless of whether the loss to be indemnified was caused in part by an indemnified person.

**§ 8.6.3** The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due any employees in rendering services pursuant to the Contract or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

**§ 8.6.4** By executing this Contract the Contractor represents that the Contractor has reviewed the Contract Documents and affirms that the Contractor is not aware of any material defects in said documents that might prevent the Contractor from completing the Work and the Project as promised herein. The Contractor accordingly waives any claim of such material defect against the Owner.

### **§ 8.7 Contractor's Responsibility for Subcontractors**

The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to bind all Subcontractors to Contractor by all the terms herein set forth, insofar as applicable to the work of Subcontractors, and to give Contractor the same power regarding termination of any subcontract as the Owner may exercise over the Contractor under any provisions of this Contract. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the Owner or between any Subcontractors.

### **§ 8.8 Conflicts.**

**§ 8.8.1** Contractor covenants that it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to be performed under this Contract. The Contractor further covenants that in the performance of this Contract no person having such interest shall be employed.

**§ 8.8.2** No salaried officer, employee or elected official of the Owner shall have a financial interest, direct or indirect, in this Contract. A violation of this provision renders the Contract void. Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated.



**§ 8.9 Assignment.**

Contractor shall not assign or transfer any interest in this Contract (whether by assignment or novation), and shall not substitute any specific individuals and/or personnel qualifications without prior written consent of the Owner, except that claims for money due or to become due to the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval, but notice of such assignment or transfer shall be furnished in writing promptly to the Owner. Any such assignment is expressly subject to all rights and remedies of the Owner under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the Owner to give any notice to any such assignee of any actions which the Owner may take under this agreement, though Owner will attempt to so notify any such assignee.

**§ 8.10 General Independent Contractor Clause.**

This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the Owner's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. Subject to the provisions of this Contract, the Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the Owner, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the Owner, and the Owner will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

**§ 8.11 Payment Method**

Payments made to the Contractor by the Owner under this Contract shall be affected checks.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

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

All drawings and specifications issued as part of the Construction Document Set issued by Archimages, Inc. See attached Exhibit E for complete listing.

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

**§ 9.1.2** The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction.

**§ 9.1.3** The Supplementary and other Conditions of the Contract

Document	Title	Date	Pages
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**§ 9.1.4** The Specifications:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

See attached Exhibit E for complete listing.

Section	Title	Date	Pages
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**§ 9.1.5** The Drawings:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*



See attached Exhibit E for complete listing.

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

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum No.1	March 12, 2018	73 pages
Addendum No. 2	March 19, 2018	81 pages
Addendum No. 3	March 20, 2018	9 pages
Addendum No. 4	March 22, 2018	2 pages
Addendum No. 5	March 22, 2018	16 pages
Addendum No. 6	March 23, 2018	11 pages

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

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

- 1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
- 2 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

Exhibit A: General Conditions AIA 201 - 2007  
Exhibit B: Contract Bid Form and Bid Bond  
Exhibit C: Bid Category Scope of Work  
Exhibit D: Modification/Explanation of the Change Order Fee  
Exhibit E: Contract Document Log  
Exhibit F: Supplemental General Conditions

## ARTICLE 10 INSURANCE AND BONDS

### § 10.1.1 Insurance Requirements

The Contractor shall secure and maintain at its own cost and expense and throughout the duration of this Contract and until the work is completed and accepted by the Owner, insurance of such types and in such amounts as may be necessary to protect it and the interests of the Owner against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the Owner. Bid package requires AM Best rating of A-IX or higher. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

Certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the Owner within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. Work may not proceed until proof of all required insurance has been provided to the

Owner. All insurance policies shall include an ISO Additional Insured Endorsement (CG 20 10 and CG 20 37 2004 editions or equivalent) listing the Owner and the Owner's Representative as additional insureds on a primary basis with owner and/or construction manager insurance excess and not contributory, general liability and auto to contain waiver of subrogation in favor of Owner and its officers, directors and employees, and an ISO Notice of Cancellation/Modification Endorsement providing thirty (30) days written notice to be given by the insurance company to the Owner prior to modification or cancellation of such insurance.

Such notices shall be sent via email to ehanson@ballwin.mo.us or mailed to Owner ATTN: Eric Hanson, 14811 Manchester Road, Ballwin, MO 63011.

**§ 10.1.2 Minimum Coverages**

See Exhibit F : Supplemental General Conditions, Article IX, for minimum coverage requirements.

**§ 10.1.3 Subcontractors.**

See Exhibit F : Supplemental General Conditions, Article IX, for minimum coverage requirements

**§ 10.1.4 Pending Legislation.**

If the scope or extent of the Owner's tort liability as a governmental entity as described in Section 537.600 through 537.650 R.S.Mo. is broadened or increased during the term of this agreement by legislative or judicial action, the Owner may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the Owner may require to protect the Owner from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

**§ 10.2 Performance and Payment Bonds**

The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the Owner and on the forms approved by the Owner. Each bond shall be in the full amount of the parties' contract and shall be conditioned upon the full and faithful performance of all major terms and conditions of the contract and the payment of all labor and material suppliers. If at any time after the execution of a contract and the surety bonds (in the forms attached hereto) the Owner shall deem any bond surety to be unsatisfactory, or if for any reason, a bond ceases to be adequate to cover the performance of the work or the payment of labor and materials, the Contractor shall, at its expense and within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the Owner. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and must be listed in United States Treasury Circular 570, and the bonds shall be accompanied by current powers of attorney, on a form acceptable to Owner.

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

  
OWNER (Signature)

Tim Pogue, Mayor  
The City of Ballwin, Missouri  
(Printed name and title)

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

Thomas Kraska, President  
K&S Associates Inc.  
(Printed name and title)

(Table deleted)(Paragraphs deleted)(Paragraphs deleted)

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 17:22:26 on 04/04/2018.

**PAGE 1**

**AGREEMENT** made as of the 9th day of April in the year 2018

...

The City of Ballwin, Missouri  
14811 Manchester Road  
Ballwin, MO 63011

~~and the Contractor:~~ and the Contractor:

K&S Associates, Inc.  
516 Hanley Industrial Ct.  
St. Louis, MO 63144

...

City of Ballwin, Missouri  
City Hall Project  
77 Seven Trails Drive  
Ballwin, MO 63011

...

Chiodini Architects  
1401 S. Brentwood Blvd.  
Studio 575  
St. Louis, MO 63144

**PAGE 2**

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

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

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



...

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

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.) (309) Calendar days from the notice to proceed, issued by the Owner, and subject to any time extensions permitted hereunder for excusable delays or Owner requested changes.

§ 3.4 Contractor understands that time is of the essence for the Owner as to the deadlines set forth in this Contract, that Owner will be harmed if Contractor fails to complete the Project in a timely manner, that precise quantification of damages for such harm would be difficult, and the amounts specified herein as Liquidated Damages for delay are reasonable. Contractor shall be responsible to maintain scheduled items for the Contractor's Work as shown in the Contract Documents. In the event that the Contractor does not substantially complete the Work, and accepted bid alternates by the required Substantial Completion date, Contractor agrees to pay the Owner, or to deduct from the Contract Sum, not as a penalty, but as liquidated damages, the amount of \$1,500 for each and every calendar day that Substantial Completion is delayed.

§ 3.5 The Contractor shall also include within the stated calendar days in Section 3.3 above an allowance of twenty (20) work days for delays due to weather. Contractor shall reference AIA 201 Section 8.3.6 for the number of adverse weather days that must be included in the contractual calendar days.

<b>Portion of Work</b>	<b>Substantial Completion Date</b>
------------------------	------------------------------------

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

§ 3.6 If Contractor shall neglect, refuse, or fail to complete the remaining work and closeout documents within 30 days after Substantial Completion (including any proper extension granted by Owner), Contractor shall pay the Owner the stipulated sum of Five Hundred Dollars (\$500) for each day that expires after the time specified for completion and readiness for final payment.

PAGE 3

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$—Two Million Seven Hundred Eighty Five Thousand Dollars ( \$2,785,000 ), subject to additions and deductions as provided in the Contract Documents.

...

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Base Bid:	\$2,667,000.00
Payment and Performance Bond:	\$23,000.00
Alternate No. 1: Sidewalks	\$56,000.00
Alternate No. 2: Exterior Lighting	\$39,500.00
Alternate No. 3: Ballistic / Bullet Proof Wall	\$4,200.00
Alternate No. 6: (DEDUCT) Dumpster Enclosure	\$(10,700.00)
Alternate No. 8: (3) Flagpoles	\$6,000.00

The Owner reserves the right to accept the following alternates through the change order process post execution of this agreement for the amounts below. This contractor will advise the Owner on when these decisions need to be made in order to not delay the project. Contractor must hold prices for these alternates until that time.:

Alternate No. 4: Landscaping, Sod, Seed, Irrigation	\$53,000.00
Alternate No. 5: (DEDUCT) Moisture Mitigation	\$(21,000.00)

Alternate No. 7: 2" Mill and Overlay Existing Parking Lot \$19,000.00  
Alternate No. 9: Fire Hydrant and Valve along 7 Trails Dr. \$17,600.00

...

(Identify and state the unit price, state quantity limitations, if any, to which the unit price will be applicable.) See bid documents for full description of unit prices.

...

<u>Unit Price No. 1: Removal of unsuitable soils and import &amp; compaction of suitable soils.</u>	<u>Per Cubic Yard</u>	<u>\$33</u>
<u>Unit Price No. 2: Treatment of on-site unsatisfactory soils.</u>	<u>Per Cubic Yard</u>	<u>\$21</u>
<u>Unit Price No. 3: Removal and haul-off of rippable rock.</u>	<u>Per Cubic Yard</u>	<u>\$33</u>
<u>Unit Price No. 4: Removal and haul-off of non-rippable rock.</u>	<u>Per Cubic Yard</u>	<u>\$38</u>
<u>Unit Price No. 5: Removal and haul-off of trench rock.</u>	<u>Per Cubic Yard</u>	<u>\$192</u>
<u>Unit Price No. 6: Removal and disposal of existing buried concrete man-made structures.</u>	<u>Per Cubic Yard</u>	<u>\$60</u>
<u>Unit Price No. 7: Removal of unsuitable soils, haul-off, and placement of lean concrete for soil remediation.</u>	<u>Per Cubic Yard</u>	<u>\$165</u>
<u>Unit Price No. 8: Load and haul-off of surplus soils.</u>	<u>Per Cubic Yard</u>	<u>\$17</u>
<u>Unit Price No. 9: Soil import and placement and compaction.</u>	<u>Per Cubic Yard</u>	<u>\$15</u>
<u>Unit Price No. 10: 1" clean rock placement and compaction</u>	<u>Per Cubic Yard</u>	<u>\$31</u>
<u>Unit Price No. 11: 1" minus rock placement and compaction</u>	<u>Per Cubic Yard</u>	<u>\$21</u>
<u>Unit Price No. 12: 2" clean rock placement and compaction</u>	<u>Per Cubic Yard</u>	<u>\$28</u>
<u>Unit Price No. 13: 2" minus rock placement and compaction</u>	<u>Per Cubic Yard</u>	<u>\$21</u>
<u>Unit Price No. 14: Topsoil place and final grade</u>	<u>Per Cubic Yard</u>	<u>\$40</u>



Unit Price No. 15: Removal of unsuitable soils, haul-off, and import & compaction of 1" granular material per Geotech recommendations      Per Cubic Yard      \$38

**PAGE 4**

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

...

Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017. Replace with lean concrete. A total of 85 cubic yards of material at \$165/CY.      \$14,025.00

Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017. Replace with low plastic soil or 1 inch minus crushed limestone. A total of 100 cubic yards of material at \$34.75/CY.      \$3,475.00

Existing Fill Remediation per pages 2-3 of the SCI geotechnical report dated April 20, 2017. Remove and recompact existing fill. A total of 1700 cubic yards of material at \$6.60/CY.      \$11,220.00

§ 4.5 Neither the Contract Sum nor any reimbursables shall include any sales, use or property taxes as the Owner is exempt from paying such taxes.

**PAGE 5**

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect and Owner's Representative not later than the 20th day of a the invoicing month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than (—) Thirty (30) days after the Architect receives the Application for Payment.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. ~~This schedule, unless objected to by the Architect,~~ Any dispute regarding setting the schedule shall be resolved as provided herein. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. Applications for Payments shall be submitted on AIA Documents

G732 and G703. In the event of a dispute with regard to any item included in an Application for Payment, the Owner shall make payment for items not in dispute and shall have the right to withhold from payment the amount of such disputed item while the parties attempt to resolve the dispute in accordance with the dispute resolution provisions provided for in the Contract Documents.

Such applications shall include:

- Certified Payrolls, An original accounting of all labor rates and hours of Work
- Invoices for all materials, rental equipment, and Contractor's statements.
- Copies of Contractor's daily log
- Compliance with prevailing wage laws as per annual wage order issued with this contract
- If invoicing for stored materials that have not been delivered to the project site, the following must be provided: proof of stored materials including certificate of insurance for facility where materials are stored, photographs of such materials, materials are labeled with signs indicating materials are "Property of the City of Ballwin, MO" and copies of invoices for materials from the vendors/supplier.

...

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Five percent ( 5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Five percent ( 5 %);

PAGE 6

**§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:**

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

**Deleted.**

...

- .3 The Contractor has completed all punchlist items to the satisfaction of the Owner's Representative, Architect and Owner.
- .4 The Contractor has delivered all closeout Documentation required under the Contractor Documents, which include (1) original- final release of claims from Contractor (AIA G706 and G706A), in triplicate- operation and maintenance instructions/manuals; (1) original of final certified payrolls from Contractor and all lower tier'd subcontractor's, (1) original affidavit of compliance with prevailing wage laws from contractor and all lower tier'd subcontractor's, schedules, in triplicate-guarantees, and in triplicate-warranties, in triplicate certificates of inspections, including, in triplicate equipment manuals, in triplicate marked up record documents, and in triplicate other closeout documents reasonably required by Owner.

...

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

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

A201-2007.

## **§ 6.2 BINDING DISPUTE RESOLUTION**

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

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)* Any Claim, dispute, or other matter in question or arising out of or related to the Contract that is not resolved by the determination of the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 shall be mediated as provided in Section 15.3 thereof. If either party so desires, or if mediation fails to resolve the dispute, the dispute may be resolved by litigation.

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

— Litigation in a court of competent jurisdiction

— Other *(Specify)*

In any action brought by a party hereto to enforce the obligations of any other party hereto, the prevailing party shall be entitled to collect from the opposing party to such action such party's reasonable litigation costs and expenses (including court costs, reasonable fees of attorneys, accountants and experts and other expenses incidental to the litigation).

PAGE 7

§ 8.2 Payments due and unpaid under the Contract shall bear 9% interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

—% due.

## **§ 8.3 The Owner's representative: Party Representatives**

*(Name, address and other information)*

§ 8.3.1 The Owner has retained Navigate Building Solutions, LLC as its Construction Manager for the project. The Contractor shall cooperate with the Construction Manager's Representative to the same extent as the Owner.

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

*(Name, address and other information)*

Thomas Kraska, President

K&S Associates Inc

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

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

*(Name, address and other information)*



### Compliance with Laws:

§ 8.4.1 The Contractor shall comply with all local, state, and federal laws, rules, and regulations applicable to the provision of services and products under the Contract, including but not limited to: the Americans with Disabilities Act, employment discrimination laws, wage and hour laws (including as required by Sections 290.210 *et seq.* R.S.Mo.), the transient employer financial assurance law (Sections 285.230 *et seq.* RSMo.), and public contracting laws. The Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by the Contractor is either current or under lawful protest with the applicable taxing jurisdiction.

§ 8.4.2 Not less than the prevailing hourly rate of wages specified under Section 290.210-290.340 of the Revised Missouri Statutes and set out in the Wage Determination shall be paid to all workers performing Work under this Contract. The Contractor shall forfeit as provided in Section 290.250 of the Revised Missouri Statutes as a penalty to the Owner the sum of One Hundred Dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, that such worker is paid less than the prevailing rate for any work done under said Contract by the Contractor or by any of its Subcontractors.

§ 8.4.3 The Contractor and all subcontractors to the contract must require all on-site employees to complete the ten-hour safety training program required under Section 292.675, RSMo, if they have not previously completed the program and have documentation of having done so. The Contractor will forfeit a penalty to the Owner of \$2500 plus an additional \$100 for each employee employed by the Contractor or Subcontractor, for the calendar day, or portion thereof, such employee is employed without the required training.

§ 8.4.4 Every transient employer, as defined in Section 285.230, RsMo, must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) The notice of registration of employer withholding issued to such transient employer by the director of revenue; (2) Proof of coverage for workers' compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers' compensation; and (3) The notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with these requirements shall, under section 285.234, RsMo, be liable for a penalty of Five Hundred Dollars (\$500.00) per day until the notices required by this section are posted as required by that statute.

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

§ 8.5.1 The Contractor & each Subcontractor are required to submit, WEEKLY, ONE (1) Certified ORIGINAL for each week that work is in progress & SHOULD BE NUMBERED SEQUENTIALLY. If work is temporarily suspended, the last payroll should be appropriately marked to note that it would be the last payroll until work is resumed. Submitter shall make sure that each payroll is numbered and dated, includes the name of the Project on it as well as the name of the Subcontractor. It is important that submitter number ALL payrolls sequentially. This will keep Contractor from having to send "No Work" payrolls when no hours are logged for a pay period. It will also make it easier to track and communicate any inconsistencies. Submitter shall label each of the "Final Payrolls" from each contractor/subcontractor as such.

§ 8.5.2 The Contractor must submit one (1) certified originals of each weekly payroll within 7 days of the payment date of the payroll. The certification may be attached to the payroll or may be on the payroll itself. The Contractor will be considered responsible for submittal of payrolls and certifications for all their sub recipients on the project. The certification must be properly signed originals. Electronic submittal of certified payrolls is not permitted. Failure to submit these payrolls within the 7-day period will result in delay in submittal of pay applications. All certified payrolls must be certified by an officer of the company only. Contractor cannot certify several pay periods with only one payroll certification. This is unacceptable to the Department of Labor. Each certification must also be dated and signed to be valid. Owner would prefer that the certification be signed in a color other than black. Owner can accept Xeroxed payrolls; however, the certifications must each be signed with an original, live signature. THE OWNER CANNOT ACCEPT COPIED SIGNATURES ON THE PAYROLL CERTIFICATIONS.



The employee's full name must be used. Addresses are not optional and MUST be listed on publicly funded projects such as this one. Social Security numbers are no longer allowed on certified payrolls, however, in lieu of the Social Security number; the contractor must assign the employee an identification number and place that identification number on the certified payroll. The identification number can be the last four digits of the employee's Social Security number. Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for labor standards compliance. All deductions must be clearly identified. Only approved deductions should be used in wage rate calculations as per the Code of Federal Regulations. The US Department of Labor Form LS-57 may be used, as this form complies with all code requirements. If any part of the payroll or payroll certification is illegible or not completely filled out, they will be returned to your office for correction and re-submission. IMPORTANT NOTE: APPRENTICE CERTIFICATION LETTERS MUST ACCOMPANY CERTIFIED PAYROLLS THE 1ST TIME THEIR NAME APPEARS ON A CERTIFIED PAYROLL-IF NOT ATTACHED IT WILL DELAY APPROVAL OF CERTIFIED PAYROLL, AND THEREFORE PAY APPLICATION SUBMISSION.

§ 8.5.3 Unauthorized Alien Act Compliance and Federal Work Authorization Program Enrollment - No business or entity involved with this project shall employ an unauthorized alien to perform work within the state of Missouri. As a condition for the award of any contract or grant in excess of \$5,000.00, the business entity shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program (for example, the so called Federal E-Verify Program) with respect to the employees working in connection with the contracted services (see section 285.530 RSMo, enclosed in the laws section). To reaffirm - All Contractors are required to obtain and make available for inspection by the contracting public body from each subcontractor of any tier, an original sworn affidavit which affirms, under penalty of perjury, that the subcontractor is enrolled & actively participating in a federal work authorization program, that the subcontractor does not knowingly employ any person who is an Unauthorized Alien in connection with the contracted services, and the subcontractor's employees are lawfully present in the United States. The Contractor shall comply with all applicable federal, state & local labor laws & is not knowingly in violation of §RSMo 285.530(1) and shall not henceforth be in such violation. This shall appear in contracts between the general contractor and subcontractors and contracts between subcontractors of any tier.

#### § 8.6 Other provisions: **Liability and Indemnity:**

§ 8.6.1 In no event shall the Owner be liable to the Contractor for special, indirect, or consequential damages, except those caused by the Owner's willful misconduct arising out of or in any way connected with a breach of this Contract. The maximum liability of the Owner shall be limited to the amount of money to be paid by the Owner under this Contract.

§ 8.6.2 The Contractor shall defend, indemnify, and hold harmless the Owner, its elected or appointed officials, Architect, Owner's Representative, and their respective consultants, agents, and employees, from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of or connected with, this Contract, or the work of any subcontract hereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including but not limited to claims for personal injuries, death, or property damage (other than the Work itself), regardless of whether the loss to be indemnified was caused in part by an indemnified person.

§ 8.6.3 The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due any employees in rendering services pursuant to the Contract or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.

§ 8.6.4 By executing this Contract the Contractor represents that the Contractor has reviewed the Contract Documents and affirms that the Contractor is not aware of any material defects in said documents that might prevent the Contractor from completing the Work and the Project as promised herein. The Contractor accordingly waives any claim of such material defect against the Owner.

#### § 8.7 Contractor's Responsibility for Subcontractors

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The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work to bind all Subcontractors to Contractor by all the terms herein set forth, insofar as applicable to the work of Subcontractors, and to give Contractor the same power regarding termination of any subcontract as the Owner may exercise over the Contractor under any provisions of this Contract. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the Owner or between any Subcontractors.

### **§ 8.8 Conflicts.**

**§ 8.8.1** Contractor covenants that it has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services to be performed under this Contract. The Contractor further covenants that in the performance of this Contract no person having such interest shall be employed.

**§ 8.8.2** No salaried officer, employee or elected official of the Owner shall have a financial interest, direct or indirect, in this Contract. A violation of this provision renders the Contract void. Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated.

### **§ 8.9 Assignment.**

Contractor shall not assign or transfer any interest in this Contract (whether by assignment or novation), and shall not substitute any specific individuals and/or personnel qualifications without prior written consent of the Owner, except that claims for money due or to become due to the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution without such approval, but notice of such assignment or transfer shall be furnished in writing promptly to the Owner. Any such assignment is expressly subject to all rights and remedies of the Owner under this agreement, including the right to change or delete activities from the Contract or to terminate the same as provided herein, and no such assignment shall require the Owner to give any notice to any such assignee of any actions which the Owner may take under this agreement, though Owner will attempt to so notify any such assignee.

### **§ 8.10 General Independent Contractor Clause.**

This Contract does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the Owner's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. Subject to the provisions of this Contract, the Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the Owner, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the Owner, and the Owner will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

### **§ 8.11 Payment Method**

Payments made to the Contractor by the Owner under this Contract shall be affected checks.

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All drawings and specifications issued as part of the Construction Document Set issued by Archimages, Inc. See attached Exhibit E for complete listing.

...

### **§ 9.1.3 The Supplementary and other Conditions of the Contract:Contract**

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...

See attached Exhibit E for complete listing.  
**PAGE 11**

See attached Exhibit E for complete listing.

...

<u>Addendum No.1</u>	<u>March 12, 2018</u>	<u>73 pages</u>
<u>Addendum No. 2</u>	<u>March 19, 2018</u>	<u>81 pages</u>
<u>Addendum No. 3</u>	<u>March 20, 2018</u>	<u>9 pages</u>
<u>Addendum No. 4</u>	<u>March 22, 2018</u>	<u>2 pages</u>
<u>Addendum No. 5</u>	<u>March 22, 2018</u>	<u>16 pages</u>
<u>Addendum No. 6</u>	<u>March 23, 2018</u>	<u>11 pages</u>

...

- Exhibit A: General Conditions AIA 201 - 2007
- Exhibit B: Contract Bid Form and Bid Bond
- Exhibit C: Bid Category Scope of Work
- Exhibit D: Modification/Explanation of the Change Order Fee
- Exhibit E: Contract Document Log
- Exhibit F: Supplemental General Conditions

**ARTICLE 10 INSURANCE AND BONDS**

**§ 10.1.1 Insurance Requirements**

The Contractor shall secure and maintain at its own cost and expense and throughout the duration of this Contract and until the work is completed and accepted by the Owner, insurance of such types and in such amounts as may be necessary to protect it and the interests of the Owner against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the Owner. Bid package requires AM Best rating of A-IX or higher. Regardless of such approval, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

Certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the Owner within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. Work may not proceed until proof of all required insurance has been provided to the Owner. All insurance policies shall include an ISO Additional Insured Endorsement (CG 20 10 and CG 20 37 2004 editions or equivalent) listing the Owner and the Owner's Representative as additional insureds on a primary basis with owner and/or construction manager insurance excess and not contributory, general liability and auto to contain waiver of subrogation in favor of Owner and its officers, directors and employees, and an ISO Notice of Cancellation/Modification Endorsement providing thirty (30) days written notice to be given by the insurance company to the Owner prior to modification or cancellation of such insurance.

Such notices shall be sent via email to [ehanson@ballwin.mo.us](mailto:ehanson@ballwin.mo.us) or mailed to Owner ATTN: Eric Hanson, 14811 Manchester Road, Ballwin, MO 63011.

**§ 10.1.2 Minimum Coverages**

See Exhibit F : Supplemental General Conditions, Article IX, for minimum coverage requirements.

**§ 10.1.3 Subcontractors.**

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User Notes:

(2053853516)



Owner. All insurance policies shall include an ISO Additional Insured Endorsement (CG 20 10 and CG 20 37 2004 editions or equivalent) listing the Owner and the Owner's Representative as additional insureds on a primary basis with owner and/or construction manager insurance excess and not contributory, general liability and auto to contain waiver of subrogation in favor of Owner and its officers, directors and employees, and an ISO Notice of Cancellation/Modification Endorsement providing thirty (30) days written notice to be given by the insurance company to the Owner prior to modification or cancellation of such insurance.

Such notices shall be sent via email to ehanson@ballwin.mo.us or mailed to Owner ATTN: Eric Hanson, 14811 Manchester Road, Ballwin, MO 63011.

**§ 10.1.2 Minimum Coverages**

See Exhibit F : Supplemental General Conditions, Article IX, for minimum coverage requirements.

**§ 10.1.3 Subcontractors.**

See Exhibit F : Supplemental General Conditions, Article IX, for minimum coverage requirements

**§ 10.1.4 Pending Legislation.**

If the scope or extent of the Owner's tort liability as a governmental entity as described in Section 537.600 through 537.650 R.S.Mo. is broadened or increased during the term of this agreement by legislative or judicial action, the Owner may require Contractor, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the Owner may require to protect the Owner from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

**§ 10.2 Performance and Payment Bonds**

The Contractor shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the Owner and on the forms approved by the Owner. Each bond shall be in the full amount of the parties' contract and shall be conditioned upon the full and faithful performance of all major terms and conditions of the contract and the payment of all labor and material suppliers. If at any time after the execution of a contract and the surety bonds (in the forms attached hereto) the Owner shall deem any bond surety to be unsatisfactory, or if for any reason, a bond ceases to be adequate to cover the performance of the work or the payment of labor and materials, the Contractor shall, at its expense and within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Contractor shall be deemed to be due under this contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the Owner. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and must be listed in United States Treasury Circular 570, and the bonds shall be accompanied by current powers of attorney, on a form acceptable to Owner.

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

  
OWNER (Signature)

Tim Pogue, Mayor  
The City of Ballwin, Missouri  
(Printed name and title)

CONTRACTOR (Signature)

Thomas Kraska, President  
K&S Associates Inc.  
(Printed name and title)

(Table deleted)(Paragraphs deleted)(Paragraphs deleted)

Init.

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

**AIA® Document D401™ – 2003**

I, Christopher L. Chiodini, 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 17:22:26 on 04/04/2018 under Order No. 2470750616 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

---

*(Title)*

---

*(Dated)*



## PROPOSAL/BID FORM

The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

Below is a contact for the BIDDER submitting this bid, who will be responsible for any questions that may arise during bid review and who may also be contacted to discuss the acceptance or rejection of this bid:

BIDDER Company Name	<b>K&amp;S Associates, Inc.</b>
BIDDER Contact Person Name	<b>Thomas J. Kraska, President</b>
Address	<b>516 Hanley Industrial Ct</b>
City/State/Zip	<b>St. Louis, MO 63144</b>
Phone Number	<b>314-647-3535</b>
Email Address	<b>tkraska@ksgcstl.com</b>
Fax Number	<b>314-647-5302</b>

BIDDER accepts all of the terms and conditions of the "Notice to Bidders" and the "Instructions to Bidders", including without limitation those dealing with the disposition of Bid security.

### Bidding and Contract Requirements

#### STIPULATED SUM BID FORM

Name of Project: **Ballwin City Hall Project**

Date: March 29, 2018

Proposal from: K&S Associates, Inc.

(Hereinafter called Bidder), a corporation organized and existing under the laws of the state of Missouri, a <sup>corporation</sup> ~~partnership, or an individual~~ doing business as K&S Associates, Inc. (cross out inapplicable).

TO: Eric Hanson, City Administrator  
 City of Ballwin, Missouri  
 14811 Manchester Road  
 Ballwin, MO 63011

The Bidder, in compliance with the Invitation for Bid for the project, and having carefully examined the Bidding Documents as set forth in the Project Manual, which documents are made a part hereof, as well as the site and all conditions surrounding and affecting the work, agrees to furnish all labor, materials, and supplies necessary to perform all the work in accordance with said documents and within the time and at the prices stated below.

**BASE BID**

Ballwin City Hall Project					
ITEM NO.	ITEM DESCRIPTION	UNIT	PRICE PER UNIT	QUANTITY	SUB-TOTAL
1	Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017. Replace with lean concrete.	Cubic Yard	165 <sup>00</sup>	85	14,025 <sup>00</sup>
2	Expansive Clay Remediation per the SCI geotechnical report dated April 20, 2017 Replace with low plastic soil or 1 inch minus crushed limestone.	Cubic Yard	34 <sup>75</sup>	100	3,475 <sup>00</sup>
3	Existing Fill Remediation per pages 2-3 of the SCI geotechnical report dated April 20, 2017. Remove and recompact existing fill.	Cubic Yard	<del>6.00</del> 6 <sup>00</sup>	1700	11,220 <sup>00</sup>
4	Remaining Scope of Work	Lump Sum		1	2,638,280 <sup>00</sup>

Furnish all labor, tools, equipment, and material required to perform all work indicated for the Ballwin City Hall Project, as defined in the Bid Documents for the **TOTAL LUMP SUM AMOUNT** of (as the total of Items 1, 2, 3 & 4 in above table):

Two Million, Six Hundred Sixty Seven Thousand Dollars

\$ 2,667,000<sup>00</sup>

**PERFORMANCE & PAYMENT BOND**

If a performance bond is required by this Contractor, add the sum of

Twenty Three Thousand Dollars

\$ 23,000<sup>00</sup>

**ALTERNATES - To be submitted at the time of bid. Bids will not be accepted if these alternates are not provided at the time of bid.**

**ADD ALTERNATE #1: SIDEWALKS (NOTE: SIDEWALKS, RAMPS, STAIRS AND RAILING, HEAVE SLABS AT ENTRIES, PATIO AND MECHANICAL PAD WEST OF BUILDING ARE ALL INCLUDED IN ALTERNATE.)**

Fifty Six Thousand Dollars

\$ 56,000<sup>00</sup>

**ADD ALTERNATE #2: EXTERIOR LIGHTING TO INCLUDE LIGHT BOLLARDS, IN GROUND LIGHTING AROUND BUILDING & AT FLAGPOLES. (EXCLUDE CANOPY LIGHTING IN OVERHANGS, AND ANY LIGHTING MOUNTED TO EXTERIOR WALLS, WHICH IS PART OF THE BUILDING AND PARKING LOT STANDARDS WHICH ARE INCLUDED IN THE BASE BID.)**

Thirty Nine Thousand Five Hundred Dollars

\$ 39,500<sup>00</sup>

**ADD ALTERNATE #3: BALLISTIC/ BULLET PROOF WALL BETWEEN ALDERMANIC CHAMBER AND CORR 022. (BALLISTIC PARTIAL HEIGHT WALL AT DIAS, AND SOUTH WALLS OF COURTS 029 AND FRONT DESK 030 ARE INCLUDED IN THE BASE BID.)**

~~Fourteen Thousand~~ Four Thousand Two Hundred Dollars *SMP*

\$ ~~14,000<sup>00</sup>~~ 4,200<sup>00</sup>

**ADD ALTERNATE #4: LANDSCAPING TO INCLUDE SEED AND SOD, ALL PLANTINGS AND IRRIGATION. (G.C. TO INCLUDE TOP SOIL IN THEIR BASE BID.)**

Fifty Three Thousand Dollars

\$ 53,000<sup>00</sup>

**DEDUCT ALTERNATE #5: MOISTURE MITIGATION @ RF, LVT, CARPET, WALK-OFF.**

< Twenty One Thousand > Dollars

\$ < 21,000<sup>00</sup> >

**DEDUCT ALTERNATE #6: DUMPSTER ENCLOSURE IN IT'S ENTIRETY.**

< Ten Thousand Seven Hundred > Dollars

\$ < 10,700<sup>00</sup> >

**ADD ALTERNATE #7: 2" MILL & OVERLAY OF ENTIRE EXISTING PARKING LOT. SEE SHEET A050 FOR EXTENTS.**

Nineteen Thousand Dollars

\$ 19,000<sup>00</sup>

**ADD ALTERNATE #8: (3) FLAGPOLES (INCLUDING BASE & FLAGS)**

Six Thousand Dollars

\$ 6,000<sup>00</sup>

**ADD ALTERNATE #9: Fire hydrant and valve along Seven Trails Drive**

Seventeen Thousand Six Hundred Dollars

\$ 17,600<sup>00</sup>



**UNIT PRICES - To be submitted to Owner 24 Hours after Bid Date/Time.**

Unit Prices shall for scope adjustments after award shall be provided for the items listed in section 012250 – UNIT PRICES. Bidder shall use the Supplemental Bid Information form provided and submit within 24 hours of the Bid date and time.

**COST BREAKOUT – To be submitted to Owner 24 Hours after Bid Date/Time.**

See form provided in Specification labeled as “Supplemental Bid Information” to submit to Owner 24 hours after bid date/time.

**LIST OF PROPOSED SUBCONTRACTORS – To be submitted to Owner 24 Hours after Bid Date/Time.**

See form provided in Specification labeled as “Supplemental Bid Information” to submit to Owner 24 hours after bid date/time. List all potential M/W/DBE contract amounts as well for proposed subcontractors.

**REFERENCES – To be submitted at the time of bid.**

Bids will not be accepted if references are not provided at the time of bid. Bidder shall provide at least three references of similar projects.

Company: Wildwood Cooperative  
Address: 7211 Manchester Rd., St. Louis, MO 63141  
Contact Person: Ralph Bicknese  
Telephone: 314-531-9901  
Email: rbicknese@hellmuth-bicknese.com  
Type of service provided: General Contractor/New City Hall  
Dates/year(s) service was provided: 2014

Company: Bunge North America  
Address: 11720 Borman Drive, St. Louis, MO 63146  
Contact Person: Ian Messmore  
Telephone: 314-292-2766  
Email: ian.messmore@bunge.com  
Type of service provided: General Contractor/Bunge Creative Solutions Center  
Dates/year(s) service was provided: 2016-2017

Company: Danforth Plan Science Center  
 Address: 975 Warson Road, St. Louis, MO 63132  
 Contact Person: Todd Hornburg  
 Telephone: 314-587-1051  
 Email: thornburg@danforthcenter.org  
 Type of service provided: General Contractors/New Plant Science Center  
 Dates/year(s) service was provided: 2016-2017

**TIME**

The anticipated Board approval and issue of conditional Notice to Proceed will be April 9, 2018. BIDDER hereby states that the time required to perform all work indicated in the BID DOCUMENTS (and any accepted alternates) and work necessary to complete the project per the project milestone schedule listed in the scope of work is acceptable. Liquidated Damages shall be assessed for delays to Substantial Completion and are further described in the bidding and contract requirements. The following dates of Substantial Completion are hereby established for the project:

February 19<sup>th</sup>, 2019 Substantial Completion  
 March 15<sup>th</sup>, 2019 Completion of all Punchlist Work

**BID DOCUMENTS**

A. Bidder acknowledges receipt of the following Appendixes & Addenda:

- 1. Drawings and Specifications
- 2. Addenda
  - a. Addenda No. 1 Dated 3/12/18 Addenda No. 5 - Dated 3/22/18
  - b. Addenda No. 2 Dated 3/19/18 Addenda No. 6 - Dated 3/23/18
  - c. Addenda No. 3 Dated 3/20/18
  - d. Addenda No. 4 Dated 3/22/18

**MISCELLANEOUS BID REQUIREMENTS**

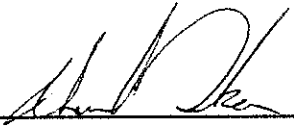
- A. The undersigned understands that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled closing time and date for receiving bids.
- B. The undersigned understands that the Owner reserves the right to reject any or all bids or subcontractors.
- C. The undersigned further agrees to indemnify and save the Owner from and against all losses, judgments of every nature and description made, brought, or recovered against the Owner by reason of any act or omission of the undersigned, his agents, subcontractors, or employees in the execution of the work or in guarding the

same.

- D. The undersigned hereby declares that this Stipulated Sum Bid is based solely upon the materials and equipment described in the bidding documents (including Addenda), and that no substitutions are contemplated.
- E. The Bidder declares that he/she has had an opportunity to examine the site of the work and he/she has examined the bidding Documents therefore, and that he/she has carefully prepared his Bid upon the basis thereof and that he/she has carefully examined and checked this Bid and the materials, equipment and labor required thereunder, the cost thereof, and his figures therefor, and hereby states that the amount or amounts set forth in this Bid is, or are, correct and that no mistake or error has occurred in this bid.
- F. See next page for signatures.

**IF A CORPORATION**

K&S Associates, Inc.  
Name of Corporation

  
Signature of Officer  
**Thomas J. Kraska, President**  
Name and Title of Officer

Incorporated under the laws of the State of Missouri (Print)

Licensed to do business in Missouri? (Check one)     Yes     No

Address for Communications    516 Hanley Industrial Ct  
St. Louis, MO 63144  
(Seal if bid is by a corporation.)

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**IF A PARTNERSHIP**

State name and address of all partners:

\_\_\_\_\_  
Name of Partnership

\_\_\_\_\_  
\_\_\_\_\_  
Signature of Authorized Partner

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**IF INDIVIDUAL**

\_\_\_\_\_  
Name of Firm (if any)

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Name of Individual (Print)

\_\_\_\_\_  
Address for Communications

---

**IF BIDDING AS A JOINT VENTURE** *(List all parties.)*

\_\_\_\_\_  
\_\_\_\_\_



# Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

**K & S Associates, Inc.**  
516 Hanley Industrial Court  
St. Louis, MO 63144

**SURETY:**

(Name, legal status and principal place of business)

**Liberty Mutual Insurance Company**  
175 Berkeley Street  
Boston, MA 02116  
(617) 357-9500

**OWNER:**

(Name, legal status and address)

**City of Ballwin**  
14811 Manchester Road  
Ballwin, MO 63011

**BOND AMOUNT: Five Percent of the Total Amount Bid (5%)**

**PROJECT: Ballwin City Hall / 2017.057**

(Name, location or address, and Project number, if any)

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

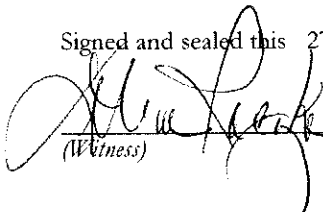
Project Number, if any:

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

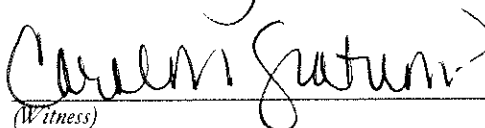
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 27th day of March, 2018

  
\_\_\_\_\_  
(Witness)

**K & S Associates, Inc.**  
\_\_\_\_\_  
(Principal) (Seal)

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

  
\_\_\_\_\_  
(Witness)

**Liberty Mutual Insurance Company**  
\_\_\_\_\_  
(Surety) (Seal)

\_\_\_\_\_  
(Title) **Susan M. Stefanski, Attorney-in-Fact**



By arrangement with the American Institute of Architects, the National Association of Surety Bond Producers (NASBP) ([www.nasbp.org](http://www.nasbp.org)) makes this form document available to its members, affiliates, and associates in Microsoft Word format for use in the regular course of surety business. NASBP vouches that the original text of this document conforms exactly to the text in AIA Document A310-2010, Bid Bond. Subsequent modifications may be made to the original text of this document by users, so careful review of its wording and consultation with an attorney are encouraged before its completion, execution or acceptance.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 7951763

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS. That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Dennis D. Flatness; Taffra S. Holman; Barbara J. Lemm; Dennis W. Lutz; Susan M. Stefanski

all of the city of Saint Louis, state of MO each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 29th day of November, 2017



The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: [Signature]  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss  
COUNTY OF MONTGOMERY

On this 29th day of November, 2017, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Teresa Pastella, Notary Public  
Upper Merion Twp., Montgomery County  
My Commission Expires March 28, 2021  
Member, Pennsylvania Association of Notaries

By: [Signature]  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS** – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of March, 2018



By: [Signature]  
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

**City of Ballwin, Missouri**  
**Ballwin City Hall Project**  
**Scope of Work - Bid Package No. 1 - General Works Contractor**

The Construction Manager (CM) referred to below is Navigate Building Solutions, LLC. The Owner referred to below is the City of Ballwin, Missouri. The Contractor referred to below is the General Works Contractor. This bid package includes, but is not limited to, the following:

All work outlined by the project documents (plans and specifications) issued by Chiodini Architects dated **March 2, 2018**.

Specifications: Division 00 all Sections; Division 01 all Sections; Division 03 through 28 all Sections; Division 31 through 33 all Sections; Civil & Landscaping work.

1. Contractor is aware of the potential for Liquidated Damages. Contractor shall be responsible to maintain scheduled items for the Contractor's work as included in the project master schedule below. Contractor shall reference AIA 101 and AIA 201 contract drafts provided in the bid documents, Contractor agrees to pay the Owner, or to deduct from the Contract Sum, not as a penalty, but as liquidated damages, the amounts listed in the contract drafts provided. The draft AIA 101 and AIA 201 have been modified from their original versions. Contractor shall read and agree to these documents as part of the bid process.
2. Upon execution of this contract, this contractor must submit to the CM a detailed critical path baseline construction schedule outlining each construction activity and phase. This schedule must fall within the master project schedule outlined below and be submitted no later than twenty-one (21) days following execution of the contract. Contractor is required to provide updated work schedules on a weekly basis. Contractor's detailed activity schedule/critical path schedule shall adhere to the master project schedule. Should the Contractor fall behind schedule by more than 5 work days due to the fault of this Contractor, the Contractor shall provide a recovery schedule to the Construction Manager within 5 days of request by the Construction Manager.

Project Master Schedule/Milestone Dates:

Receipt of Bids	<b>March 29, 2018</b>
Pre-Award Interviews	<b>April 2, 2018</b>
Board Approval of Contractor	April 9, 2018
Notice to Proceed (Day 1)	April 13, 2018
Mobilization	April 23, 2018
Groundbreaking	TBD
Substantial Completion (Day 309)	February 15, 2019
Completion of all Punchlist Work	March 15, 2019
Owner Move-In	March 18, 2019

3. Provide all supervision, labor, tools, equipment and materials to complete the work.
4. Perform all freight, unloading, loading, distribution and hoisting of materials.
5. Furnish, install, maintain and remove temporary on-site trailers and storage containers as required to perform the work. This contractor shall provide in the jobsite trailer a

**City of Ballwin, Missouri**  
**Ballwin City Hall Project**  
**Scope of Work**  
**Bid Package No. 1 - General Works Contractor**

conference table and chairs for contractor weekly foreman meetings, bi-weekly Owner meetings, and other meetings as needed. This contractor shall also provide a work space for the Construction Manager to use intermittently during construction in the jobsite trailer.

6. Perform all work in accordance with OSHA standards and the Additional Project Safety Requirements issued in the specifications (including OSHA 10-hour requirement).
7. The Owner will furnish a land disturbance permit, building permit, fire permit, and County Health Department permit. This contractor (or its subcontractors) is responsible for all other trade permits, tap/connection fees required by utility companies, state, county, local, regional, and federal authorities and agencies associated with this scope of work. Contractor shall also include the cost of the meters from Missouri American Water Company.
8. Coordinate all work with the Construction Manager.
9. This contractor shall provide all layout required to complete the work included in this Contractor's scope of work.
10. Review all drawings and specifications and accept responsibility for requirements, general notes, notes, specifications, and details as they relate to this scope of work.
11. This Contractor will install, maintain, and remove all SWPPP procedures and silt fence for the project. Contractor will provide weekly and rain event SWPPP reports per MDNR standards.
12. This Contractor is responsible for locating all public and private utilities.
13. Provide street cleaning to remove dirt, mud, and debris generated by the project site as needed to maintain a clean surface along Seven Trails Dr. and adjacent roads if needed.
14. Provide adequate dust control during construction work, including misting during demo and earthwork operations.
15. Provide barricades, signage, flagging and flagman for traffic control and public safety during the execution of the work.
16. Protect adjacent properties and utilities as required during the execution of this work. Provide shoring as required for safe excavations to meet OSHA requirements and to protect adjacent streets, sidewalks and utilities. If this requires engineered shoring systems, this Contractor will provide as needed for this scope of work.
17. This Contractor shall furnish all dumpsters for the project and shall include cost to haul offsite and legally dispose of all construction rubbish and debris. Cleanup all rubbish and debris from site and building daily.

**City of Ballwin, Missouri**  
**Ballwin City Hall Project**  
**Scope of Work**  
**Bid Package No. 1 - General Works Contractor**

18. Bi-weekly meetings at the jobsite will be held with the Construction Manager. This contractor's Project Manager and Superintendent to coordinate installation of all systems. The work of this contractor must be performed in accordance with the decision and schedules formulated at these meetings so as not to delay the work. The Contractor's Project Manager and Foreman/Superintendent must be present at these meetings.
19. Provide final cleaning of all buildings and site at the completion of the project.
20. Weekly meetings at the jobsite will be held with this contractor and its subcontractors Foreman/Project Managers to coordinate installation of all systems. The Owner and the CM shall be invited to all of these meetings and will attend at their discretion. This contractor shall keep minutes of those meetings and forward to the CM for review.
21. This contractor will be responsible to review all specifications and drawings including Architectural, Civil, Mechanical, Plumbing Electrical, Fire Protection, Low Voltage, and Structural, etc. and will include all divisions of work in their proposal.
22. Contractor will provide ice, cups and distribute drinking water for the jobsite.
23. Provide temporary protection labor and material. Contractor to also install adequate temporary protection across any exposed concrete floors to eliminate staining or damage to finished floor product. Contractor to maintain this until all this contractor's work is complete along with MEPFP trades. Once all the work has been completed this contractor will remove and dispose of the temporary protection (at a minimum request use of masonite boards with the seams taped). Any damage to exposed floors that requires remediation prior to installation of finished surface will be at the expense and responsibility of this Contractor.
24. The Owner, Architect, and CM will be very stringent on the quality of these floors during punch list. It is ultimately in this contractor's scope of work to protect their finish products through education, signage, and temporary protection.
25. No lignite to be used in any flatwork concrete (interior and exterior) that will be left exposed (i.e. to not receive flooring).
26. Contractor to furnish first aid and safety supplies as needed.
27. Contractor to grout fill frames per architectural details and notes.
28. Provide seismic support and bracing as required for installation of acoustical ceiling systems and MEPFP systems.
29. Provide Fire-Stop Systems as required for the installation of the work of this project. Fire-Stop Systems for floor and wall penetrations of all Mechanical, Plumbing, Electric and Fire Protection Systems must be included as well.



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30. Include cost to furnish and install toilet accessories including wall backing for such as indicated in specifications.
31. Contractor will provide temporary construction toilets for the project.
32. Contractor to provide and maintain weather protection for material and work as required by the project schedule. Contractor to also provide any cold or hot weather measures for weather sensitive materials like concrete, masonry, roofing materials, air/vapor barrier, etc. Delays will not be awarded for construction activities impacted by hot/cold temperatures.
33. Once the framing of the building is complete, this contractor is responsible for securing the building with temporary or permanent measures at the close of every day.
34. This contractor to supply and install a temporary site fence and appropriate gates at the entrance to the site to ensure that the site is secured daily. At the construction trailers a temporary rock parking is required for visitors to the site, unless existing parking lot is available for use for temporary construction parking, staging, and laydown areas.
35. Contractor responsible for any coordination of staging or relocation for materials after initial unloading.
36. Contractor to maintain proper SDS sheets for all materials utilized by this Contractor (and its subcontractors) in a central location on site per OSHA standards. Site Specific Safety Plan shall be completed and kept in the job trailer at all times.
37. Contractor to coordinate all deliveries of materials with Construction Manager's personnel.
38. This contractor to broom clean all floors at least once a week to ensure housekeeping stays up to par.
39. As-built Surveys will be required by this contractor at the Completion of the Project, including for Site Utilities, rain gardens, detention basins, etc. to submit to Utility company or City for final approval.
40. Testing shall be performed by and paid for by Owner. The Construction Manager will coordinate. Contractor will assist and coordinate with the agency to perform onsite testing work.
41. Include ALL caulking and sealants for all systems and materials furnished and installed.
42. No tobacco use is allowed on the project.
43. Contractor to not burn in the concrete at the carpet tile locations. Contractor to ensure floors are kept dry and clean so that the concrete can dry in order to accept adhesive for flooring products. Includes moisture mitigation as required by the specifications.

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44. This Contractor to supply and install all site storm piping and downspout connections. Contractor to coordinate site, plumbing, and architectural drawings.
45. This Contractor to supply and install all site utilities indicated as new on the project documents. The contractor is responsible for all meter costs as a part of the project..
46. Full-time onsite superintendent is required when any of this Contractor's labor or this Contractor's subcontractors labor is onsite.
47. Provide a mockup of the building envelope materials and construction techniques. The mockup should reflect the project document details and be installed exactly as indicated on the drawings. The purpose of the mockup is to not only review and achieve an approval of the materials, but also to ensure the transition of the materials results in a good water tight condition. Contractor to follow the mockup guidelines outlined in the project documents and must include at least one window (can be a smaller scale), a roof edge condition, all dissimilar material connections at the building envelope, and all flashing details at the building envelope. If, the contractor questions a detail provided, it should be submitted as an RFI and discussed with the project team prior to the construction of the mockup.
48. This contractor is required to provide a detailed work schedule on a weekly basis. Contractor's detailed work schedule shall adhere to the master project schedule. Should the contractor fall behind the master project schedule by more than 5 work days due to the fault of this contractor, the contractor shall provide a recovery schedule to the Construction Manager within 5 days of request by the Construction Manager.
49. This contractor shall produce a submittal log at the beginning of the project that is populated with all of the required submittals for the project and assign due dates for submission to the Architect and due dates for return from the Architect. This log must be submitted to the CM and Architect for review on a weekly basis.
50. This contractor shall maintain a RFI log for the project indicating the following. This log must be submitted to the CM and Architect for review on a weekly basis.
  - a. Topic of RFI
  - b. Date submitted
  - c. Date requested response by
  - d. Date returned
  - e. Status- Open or Closed
51. Immediately upon award this contractor shall submit a proposed logistics plan for review. The Owner, CM, contractor, and Architect will meet to review and discuss site logistics and finalize an agreed upon plan of action for construction parking, office/storage containers, temporary toilets, temporary site fence, etc.
52. This contractor must prepare and make available upon request, a procurement log for all long lead materials and equipment. Procurement log must include date of order, date of

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confirmation of order, expected delivery date, actual delivery date, and comments noting any changes to dates and reasons for change.

53. This contractor shall organize and arrange for pre-installation meetings for all major scopes of work with the subcontractors and manufacturers prior to commencement of those activities and invite the Owner, Architect, and CM to all pre-installation meetings. This contractor shall keep minutes of those meetings and forward to the CM and Architect for review.
54. This contractor will be responsible for submitting daily logs containing the number of workers, equipment, work accomplished, daily weather, deliveries, visitors to the site, any inspections passed or failed, problems encountered, and other relevant data as may be required. These reports shall be emailed to the CM daily utilizing an Apple iPad app called Construction Superintendent and issued to the Construction Manager within 24 hours of work performance.
55. CM must be contacted prior to cover-up of all rough-in so that photographs can be taken for Owner's record if desired.
56. This contractor shall arrange, schedule, organize and video tape all equipment start-ups and Owner Training sessions. Equipment manufacturer reps should be present at start-ups and trainings and Owner and CM should be notified of all training sessions. At the completion of the Owner Training sessions, this Contractor will organize the videos neatly into chapters and provide (3) copies to the Owner in the form of DVD.
57. This contractor must populate a closeout log and submit to the CM and Architect for review to verify that all required items have been populated. Once approved, this log will be used to track required closeout items prior to final payment. This contractor is highly encouraged to submit O&M requirements as soon as possible in advance of final acceptance to help eliminate delay in payment.
58. If this contractor chooses to backfill foundation walls prior to that time which is approved/allowed by the structural engineer, this contractor is responsible for designing, installing, rental (and eventual removal) of all temporary shoring of foundation walls prior to backfill (i.e.: if walls are not designed as structural retaining walls; verify with design engineer).
59. This contractor is responsible for any temporary heating/cooling, humidifying/dehumidifying as needed to maintain the project schedule and as needed prior to starting the permanent HVAC equipment. Use of the new HVAC system will not be allowed during construction.
60. This Contractor shall be responsible for the cost of temporary utilities during the course of construction i.e. but not limited to: gas, electric, sewer, water. There is only single phase electric available from Ameren for temporary electric. Any other needs will require the use of a temporary generator at the contractor's cost.

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61. This contractor will compile for the Owner a 'record set' of all documents and drawings for the project at substantial completion. This shall be 'red-lined' copies of all project changes throughout the course of the project to identify all systems as they were actually installed on the project for the Owner's records. These must be electronically recorded and submitted to the Owner in pdf format on a 'thumb drive'.
62. Contractor is required to hold their alternate pricing that was included in the bid form for 4 months after the bid date. Contractor will notify Construction Manager when decisions need to be made regarding the acceptance of bid alternates in order to maintain deliveries, installation, and the master project schedule.
63. Construction work shall only be allowed during the following hours:  
7AM – 8PM (Monday thru Friday)  
Construction work to be done on the weekends requires prior written approval from the City Administrator. Request for weekend work must be submitted in writing by 3PM on the Thursday prior to the weekend.
64. All erosion control systems are inspected and corrected weekly, especially within 48 hours of any rainstorm resulting in one-half inch of rain or more. Any silt or debris leaving the site and affecting public rights-of-ways or storm water drainage facilities shall be cleaned up within 24 hours after the end of the storm. A SWPPP map/plan needs to be posted in the trailer and marked up as BMP's are installed/modified.
65. Stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.
66. The CONTRACTOR shall provide a single project sign. This sign will include the City logo, design team logos, owner rep logo and the CONTRACTOR logo. It shall also include the project name and expected completion timeframe. No other project signs will be allowed on the project for advertisement. The sign needs to a minimum of 2' by 14'. The sign will be installed off the main road and maintained throughout the project.
67. The CONTRACTOR and all sub-contractors are required to stay within the limits of construction. No equipment, material, vehicles, personnel, etc. are allowed outside the limits of construction. If this is violated the CONTRACTOR will be required to install orange snow fencing around the limits of construction to prevent future violations and protect the existing habitat.
68. The CONTRACTOR will be required to use the Pro Core software for project management. All submittals/RFI's/CO's will be submitted through this software. The project documents (including schedule, meeting minutes, etc.) will also need to be loaded on to this software. **The cost for Pro Core software will be the responsibility of the contractor.**

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69. During the warranty period of the project, this Contractor shall document, maintain and update a Warranty Log of all warranty items, at a minimum monthly, to be shared with the Client and Construction Manager.



## **Ballwin, MO – City Hall Project**

### **Modification/Explanation to the Change Order Fee**

The maximum that will be allowed for overhead and profit on changes in work shall be as follows, expressed as a percentage of the basic cost of the change. The allowable percentages for profit or overhead may be less, depending on the nature, extent or complexity of the change, where the percentage is not commensurate with the responsibility and administration involved (such as the Contractor merely processing substantial Change Order to a Subcontractor) but in no event shall they exceed the following:

To the Contractor and/or its Subcontractor for work performed with their own forces 10%

To the Contractor for work performed by other than its own forces 5%

To the Subcontractor/Supplier for work performed with their own forces 10%

To the Subcontractor/Supplier for work performed by other than its own forces 5%

Not more than above specified percentages for overhead, profit and commission will be allowed to be added to the basic cost, regardless of the number of tiers of Contractors, Subcontractors or Sub-subcontractors.

The burden on labor may be indicated as a dollar/cents addition to the hourly rate or may be expressed as a percentage of the extended hourly rate costs. If required by the Owner, the Contractor shall provide a detailed breakdown to justify the labor burden. The Owner reserves the right to reject any labor burden which is inconsistent with other similar contractors or where the cost of fringe benefits are in excess of established labor agreements.

Material, equipment, and supply costs shall be quoted at the actual cost to the Contractor, or Subcontractor. Upon request, the Contractor (or Subcontractor) shall submit evidence to substantiate the costs. Said costs shall be quoted at trade discount prices, with quantity discounts also applied where the quantities warrant. In any proposal with material, equipment and supply credit, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered.

The percentages allowed for overhead and profit herein shall be deemed to include, and no further addition allowed the Contractor, Subcontractor or Sub-subcontractors for: (1) field and office supervision and administration, including the field superintendent and non-working foremen; (2) general insurance; (3) use or replacement of tools; (4) shop burden; (5) engineering costs; (6) performance (guaranty) and labor/material payment bonds; (7) cost of safety measure (including those imposed by OSHA); (8) permits, unless a new permit type is required.

Cost changes shall be computed by determining the basic costs enumerated below (as further specified under this Subparagraph), to which the overhead may be added, then the profit figure may be added, and finally adding the sales tax on materials if allowable.

For changes in the Work, the cost shall be determined as provided under this section. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Owner. As a minimum, the detailed breakdown shall include and indicate the items enumerated below. Items (a) and (b) constitute the cost of labor, and items (a), (b), (c) and (d) constitute the basic costs referred to under this section.

a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid the workmen in accordance with established management labor agreements.

b) Burden on labor, which shall be only the actual costs of mandatory fringe benefits required by established agreements, taxes on labor, worker's or workmen's compensation, insurance on labor

as affected by payroll, unemployment taxes and insurance, including FICA and FUTA. No other costs will be allowed as burden on labor.

c) Quantities of materials, equipment, and supplies, at their actual costs, with unit costs indicated.

d) The cost of subcontracted work, computed in the same way as provided for under this section.

e) Overhead, profit and commission as set forth herein.

f) Applicable sales tax on materials, added after the above computations are complete.

Subcontractors (or Sub-subcontractors) shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and the same maximum percentages for overhead and profit. To the Subcontractor's price, the Contractor may add up to a maximum of five percent (5%). For changes involving work of the Contractor with its own forces and work by a Subcontractor (or Sub-subcontractor), the commission shall be applied directly to the Subcontractor's price, with the overhead and profit figure applied only to the Work the Contractor performs with its own forces.

For changes involving both extra and credit amounts, the overhead and profit, or commission, shall be applied only to net difference where the extra exceeds the credit.

For changes resulting in a credit in the basic costs, a reasonable allowance for overhead, profit or commission may be required to be credited to the Owner, as approved by the Owner. In general, no credit for overhead, profit or commission will be required where the net change credit is minor or where the Change in Work indicates it is reasonable that no credit be allowed to the Owner due to the effort, cost or responsibility of the Contractor. In the event of substantial subcontract credits or for Work the Contractor does not provide or perform, a reasonable overhead, profit or commission credit shall be allowed to the Owner, as determined by the Owner.

Exhibit E  
 Contract Document Log  
 City of Ballwin - City Hall Project

Discipline	Sheet	Bid/Permit Set 03/02/18	Addendum#1 03/2/18	Addendum#2 03/19/18	Addendum#3 03/20/18	Addendum#4 03/22/18	Addendum#5 03/22/18	Addendum#6 03/23/18
<b>DRAWINGS</b>								
GENERAL								
	G000 COVERSHEET	X						
	G001 CODE DATA AND LIFE SAFETY	X	X	X				
	G020 STANDARD ADA DETAILS	X						
	G021 STANDARD ADA DETAILS	X	X					
SURVEY								
	1 TOPOGRAPHIC SURVEY	X						
CIVIL								
	C1 DEMOLITION PLAN	X						
	C2 SITE PLAN	X						
	C3 GRADING PLAN	X						
	C4 UTILITY PLAN	X					X	
	C5 SANITARY SEWER PLAN & PROFILE	X						
	D1 DETAIL	X					X	
	D2 DETAIL	X						
LANDSCAPING								
	L100 PLANTING PLAN	X						
	L101 AREAS TO BE IRRIGATED	X						
	L200 LANDSCAPING DETAILS	X						
	L201 NOTES & SPECIFICATIONS	X						
ARCHITECTURAL								
	A050 ARCHITECTURAL SITE PLAN	X	X					
	A101 FIRST FLOOR PLAN	X	X	X				
	A102 ROOF PLAN - LOWER	X	X					
	A103 ROOF PLAN - UPPER	X						
	A120 ENLARGED FLOOR PLANS	X		X				
	A200 EXTERIOR ELEVATIONS	X	X	X				
	A201 EXTERIOR ELEVATIONS	X	X	X				
	A300 BUILDING SECTIONS	X		X				
	A301 BUILDING SECTIONS	X		X				
	A401 FIRST FLOOR RCP	X		X				
	A402 FIRST FLOOR UPPER RCP	X		X				
	A450 CEILING DETAILS	X						
	A500 WALL SECTIONS	X		X				
	A501 WALL SECTIONS	X		X				
	A502 WALL SECTIONS	X		X				
	A503 WALL SECTIONS	X		X				
	A504 WALL SECTIONS	X		X				
	A520 ENLARGED PLAN DETAILS	X	X	X				
	A530 ENLARGED SECTION DETAILS	X	X	X				
	A600 INTERIOR ELEVATIONS	X						
	A601 INTERIOR ELEVATIONS	X	X					
	A602 INTERIOR ELEVATIONS	X						
	A603 INTERIOR ELEVATIONS	X	X					
	A604 INTERIOR ELEVATIONS	X		X				
	A650 MILLWORK DETAILS	X		X				
	A700 DOOR AND WINDOW SCHEDULE	X	X	X				
	A701 DOOR HEAD / JAMB DETAILS	X		X				
	A702 PARTITION TYPES	X						
	A801 FIRST FLOOR FINISH PLAN & SCHEDULES	X	X				X	
	A851 FIRST FLOOR FURNITURE PLAN	X			X	X		
STRUCTURAL								
	S1.1 GENERAL NOTES	X	X					
	S1.2 SCHEDULES AND TYPICAL DETAILS	X						
	S1.3 TYPICAL DETAILS	X						
	S2.1 FOUNDATION PLAN	X	X	X				
	S2.1A DIMENSIONED FOUNDATION PLAN	X	X					
	S2.2 ROOF FRAMING PLAN	X	X			X		
	S2.3 HIGH ROOF FRAMING	X	X					
	S2.4 CALL OUTS	X						
	S3.1 SECTIONS	X	X					
	S3.2 SECTIONS	X	X					
	S3.3 SECTIONS	X						
	S3.4 BRACING ELEVATIONS AND DETAILS	X						

MECHANICAL							
	M000 MECHANICAL NOTES & SYMBOLS	X					
	M100 MECHANICAL NOTES & SYMBOLS	X					
	M200 MECHANICAL SCHEDULES AND DETAILS	X					
	M300 MECHANICAL DETAILS	X					
	M400 MECHANICAL SECTIONS	X					
PLUMBING							
	P000 PLUMBING COVER	X	X				
	P001 PLUMBING SCHEDULES	X	X				
	P002 PLUMBING DETAILS	X					
	P100 PLUMBING PLAN BELOW GRADE	X	X				
	P101 PLUMBING PLAN ABOVE GRADE	X	X				
	P102 PLUMBING PLAN ROOF PLAN PENETRATIONS	X	X				
	P201 PLUMBING ENLARGED PLAN	X					
	P202 PLUMBING ENLARGED PLAN	X	X				
FIRE PROTECTION							
	F100 FIRE PROTECTION - SYMBOLS AND NOTES	X	X	X			
	F101 FLOOR PLAN - FIRE PROTECTION	X				X	X
	F102 LOWER CEILING PLAN - FIRE PROTECTION SPRINKLERS	X					
	F103 UPPER CEILING PLAN - FIRE PROTECTION SPRINKLERS	X					
	F200 FIRE PROTECTION DETAILS	X				X	X
ELECTRICAL							
	E000 ELECTRICAL ABBREVIATIONS, NOTES & SYMBOLS	X					
	E100 ELECTRICAL SITE PLAN	X					
	E101 FIRST FLOOR ELECTRICAL POWER PLAN	X					
	E102 FIRST FLOOR MECHANICAL POWER PLAN	X					
	E201 FIRST FLOOR REFLECTED CEILING PLAN	X					
	E202 UPPER LEVEL REFLECTED CEILING PLAN	X					
	E301 ELECTRICAL PANEL SCHEDULES & ONE LINE	X				X	
	E302 DATA RACK ONE-LINE & DETAILS	X					
AUDIO VISUAL							
	AV1.0 ALDERMANIC CHAMBER AV DIAGRAM	X					
	AV2.0 AV SYSTEMS	X					
	AV3.0 ALDERMANIC CHAMBER PROJECTION SCREEN ELEVATION DETAIL	X					
	AV4.0 ALDERMANIC CHAMBER SPEAKER & SCREEN LOCATIONS	X					
	AV5.0 DISPLAY ELEVATION DETAILS	X					
	AV6.0 ALDERMANIC CHAMBER CABLE RISER & POWER DETAILS	X					
	AV7.0 SOUNDMASKING SPEAKER PLACEMENT	X					

SPECIFICATIONS							
Volume 1		X					
	DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS	X					
	01113 Request for Bids	X					
	002000 Contract Agreements	X					
	AIA Document A101	X		X			
	AIA Document A202	X		X			
	Scope of Work	X				X	
	003132 Geotechnical Data and Report	X					
	004123 Bid Form – City of Ballwin	X		X			X
	Annual Wage Order	X					
	Division of Labor Standards	X					
	004322 Unit Prices	X					
	008000 Supplemental Contract Terms	X					
	Change Order Fee Modification	X					
	Site Logistics	X					
	DIVISION 01 – GENERAL REQUIREMENTS	X					
	011000 Summary	X					
	012300 Alternates	X					
	012500 Substitution Procedures	X					
	016000 Product Requirements	X					
	017000 Execution and Closeout Requirements	X					
	017800 Closeout Submittals	X					
	017419 Construction Waste Management and Disposal	X					
	017700 Closeout Procedures	X					
	017900 Demonstration and Training	X					
	DIVISION 02 – EXISTING CONDITIONS	X					
	024100 Site Demolition	X					
	DIVISION 03 – CONCRETE	X					
	See Structural Drawings	X					
	DIVISION 04 – MASONRY	X					
	047200 Cast Stone Masonry	X					
	047300 Manufactured Masonry Veneer	X					
	DIVISION 05 – METALS	X					
	See Structural Drawings	X					
	DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES	X					
	061053 Miscellaneous Rough Carpentry	X					
	064023 Interior Architectural Woodwork	X					
	064116 Plastic Laminate Faced Architectural Cabinets	X					
	064219 Plastic Laminate Faced Wood Paneling	X					
	DIVISION 07 - THERMAL AND MOISTURE PROTECTION	X					
	071326 Self Adhering Sheet Waterproofing	X				X	
	072100 Thermal Insulation	X					
	072500 Weather Barriers	X					
	072726 Fluid Applied Membrane Air Barriers	X					
	073113 Asphalt Shingles	X					
	074293 Soffit Panels	X		X			
	075423 Thermoplastic Polyolefin (TPO) Roofing	X		X			
	076200 Sheet Metal Flashing and Trim	X					
	078413 Penetration Firestopping	X					
	078443 Joint Firestopping	X					
	079200 Joint Sealants	X					
	DIVISION 08 – OPENINGS	X					
	080671 Door Hardware Sets	X		X			
	081113 Hollow Metal Doors and Frames	X					
	081416 Flush Wood Doors	X					
	083113 Access Doors and Frames	X					
	084113 Aluminum Framed Entrances and Storefronts	X			X		
	084123 Fire Rated Glass and Framing Systems	X					
	085669 Bullet Resistant Aluminum Transaction Windows	X					
	087100 Door Hardware	X					
	088000 Glazing	X					
	088300 Mirrors	X					



DIVISION 09 – FINISHES		X						
	096519 Common Work Results for Flooring Preparation	X						
	092216 Non Structural Metal Framing	X						
	092900 Gypsum Board	X						
	093013 Ceramic Tiling	X						
	095123 Acoustical Tile Ceiling	X						
	096200 Athletic Flooring	X						
	096513 Resilient Base and Accessories	X						
	096519 Resilient Tile Flooring	X						
	096813 Tile Carpeting	X						
	099113 Exterior Painting	X						
	099123 Interior Painting	X						
	099666 Interior Coating – Wink	X						
DIVISION 10 – SPECIALTIES		X						
	102113.19 Plastic Toilet Compartments	X						
	102601 Wall and Corner Guards	X						
	102641 Ballistic Fiberglass Panel	X						
	102800 Toilet, Bath, and Laundry Accessories	X						
	104413 Fire Protection Cabinets	X						
	107516 Ground Set Flagpoles	X						
DIVISION 11 – EQUIPMENT		X						
	None in this Contract	X						
DIVISION 12 – FURNISHINGS		X						
	122400 Window Shades – Lutron Contract Roller	X						
	123623.13 Plastic Laminate Clad Countertops	X						
	123661.16 Solid Surfacing Countertops	X						
DIVISION 13 - SPECIAL CONSTRUCTION		X						
	None in this Contract	X						
DIVISION 14 - CONVEYING EQUIPMENT		X						
	None in this Contract	X						
DIVISION 21 – FIRE SUPPRESSION								
	210517 - SLEEVES AND SEALS FOR FIRE-SUPPRESSION PIPING		X	X				
	210518 - ESCUTCHEONS FOR FIRE-SUPPRESSION PIPING		X					
	210523 - GENERAL-DUTY VALVES FOR FIRE-SUPPRESSION PIPING		X					
	210548 - VIBRATION AND SEISMIC CONTROLS FOR FIRE-SUPPRESSION PIPING & EQUIPMENT		X					
	210553 - IDENTIFICATION FOR FIRE-SUPPRESSION PIPING & EQUIPMENT		X					
	211100 - FACILITY FIRE-SUPPRESSION WATER-SERVICE PIPING		X					
	211119 - FIRE DEPARTMENT CONNECTIONS		X	X				
	211313 - WET-PIPE SPRINKLER SYSTEMS		X	X				
DIVISION 22 – PLUMBING		X						
	220529 Hangers and Supports for Plumbing Piping and Equipment	X						
	220553 Identification for Plumbing Piping and Equipment	X						
	220700 Plumbing Insulation	X						
	221116 Domestic Water Piping	X						
	221316 Sanitary Waste and Vent Piping	X						
	221413 Storm Drainage Piping	X						
	221423 Storm Drainage Piping Specialties	X						
	223300 Electric Domestic Water Heaters	X						
	224000 Plumbing Fixtures	X						
DIVISION 23 – MECHANICAL		X						
	230500 Common Work Results for HVAC	X						
	230513 Common Motor Requirements for HVAC Equipment	X						
	230529 Hangers and Supports for HVAC Piping and Equipment	X						
	230548 Vibration and Seismic Controls for HVAC Piping and Equipment	X						
	230553 Identification for HVAC Piping and Equipment	X						
	230593 Testing, Adjusting, and Balancing for HVAC	X						
	230700 HVAC Insulation	X						
	230900 Instrumentation and Controls for HVAC	X						
	230993 Sequence of Operation	X						
	231123 Facility Gas Piping	X						
	232300 Refrigerant Piping	X						
	232923 Variable Frequency Motor Controllers	X						
	233113 Metal Ducts	X						
	233300 Air Duct Accessories	X						
	233423 HVAC Power Ventilators	X						
	233713 Diffusers, Registers, and Grilles	X						
	237413 Rooftop Units	X						
	238126 Split System Air Conditioners	X						
	238239 Unit Heaters	X						

	DIVISION 26 – ELECTRICAL	X							
	260519 Low-Voltage Electrical Power Conductors and Cables	X							
	260526 Grounding and Bonding for Electrical Systems	X							
	260529 Hangers and Supports For Electrical Systems	X							
	260533 Raceways and Boxes for Electrical Systems	X							
	260544 Sleeves and Sleeve Seals for Electrical Raceways and Cabling	X							
	260553 Identification for Electrical Systems	X							
	260573 Short Circuit Coordination Study Arc Flash Hazard	X							
	260923 Lighting Control Devices	X							
	262416 Panelboards	X							
	262701 Electrical Service Entrance	X							
	262726 Wiring Devices	X							
	262816 Enclosed Switches and Circuit Breakers	X							
	262826 Enclosed Transfer Switches	X							
	263213 Standby Generator System	X							
	263353 Static Uninterruptible Power Supply	X							
	265119 LED Interior Lighting	X							
	265219 Emergency and Exit Lighting	X							
	265613 Lighting Poles and Standards	X							
	265619 LED Exterior Lighting	X							
	DIVISION 27 – COMMUNICATIONS	X							
	270000 Network Infrastructure	X							
	270100 Cable Data	X							
	270526 Grounding and Bonding for Communications Systems	X							
	270527 Pathways for Communications Systems	X							
	270528 Hangers and Supports for Communications Systems	X							
	270536 Cable Trays for Communications Systems	X							
	270544 Sleeves and Sleeve Seals for Communications Paths	X							
	271100 Communications Equipment Room Fittings	X							
	271323 Communications Optical Fiber Backbone Cabling	X							
	271513 Communications Copper Horizontal Cabling	X							
	274000 Audio-Visual Equipment	X							
	DIVISION 28 – ELECTRICAL SAFETY AND SECURITY	X							
	283111 Sprinkler Alarm System	X							
	DIVISION 31 – EARTHWORK	X							
	311000 Site Clearing	X							
	312300 Earthwork	X							
	312316 Rock Excavation	X							
	DIVISION 32 – EXTERIOR IMPROVEMENTS	X							
	321123 Aggregate Base Course	X							
	321216 Asphalt Paving	X							
	321313 Portland Cement Concrete	X							
	321723.13 Pavement Markings	X							
	323100 Fencing	X							
	329219 Finish Grading and Seeding	X							
	DIVISION 33-UTILITIES	X							
	331400 Water Main Supply Piping, Valves and Fittings	X							
	333100 Sanitary Sewer	X							
	334200 Storm Drainage	X							
	Pre-Bid Agenda 031218					X			
	Sign-In Sheets from Pre-Bid Meeting					X			

# **REQUEST FOR BIDS**

**CONSTRUCTION SPECIFICATIONS**

**FOR**

**CITY OF BALLWIN**

**ST. LOUIS COUNTY, MISSOURI**

**2018**

## **BALLWIN CITY HALL PROJECT**

**CITY OF BALLWIN**

**14811 MANCHESTER ROAD**

**BALLWIN, MO 63011**

In the event of a conflict between this document and the AIA 101 and AIA 201 documents provided,  
the conflict will be resolved in the favor of the AIA documents.

**CITY OF BALLWIN, MISSOURI**

## NOTICE TO CONTRACTORS

The City of Ballwin seeks bids from qualified contractors for a “**BALLWIN CITY HALL PROJECT**” (the “Project”) in the City of Ballwin, Missouri.

Sealed bids must be addressed to the Ballwin Public Works Department, 14811 Manchester Road, Ballwin, Missouri 63011 will be accepted by the City of Ballwin until **2:00 P.M.** (prevailing local time) on **March 27, 2018** at which time all bids received will be opened and read aloud.

Complete sets of Bidding Documents must be used in preparing Bids; OWNER will assume no responsibility for errors or misrepresentations resulting from the use of incomplete sets of Bidding Documents. The Contract Documents, including specifications, are on file at the office of Drexel Technologies at <http://planroom.drexeltech.com> and are open for public inspection. Copies of documents may be obtained from Drexel Technologies for the fee listed online.

Bids should be clearly marked “**BID OPENING: RFP #18-13 – “BALLWIN CITY HALL PROJECT” -ATTENTION CITY ENGINEER.**” Bids shall be submitted on the Bid Proposal form provided. All work shall be performed according to City of Ballwin specifications.

The successful bidder shall comply with applicable State provisions concerning the payment of prevailing wages on public works projects. Accordingly, all workers performing work under the City-Contractor Agreement shall be paid not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included in the Bid Documents.

### **Enrollment in Federal Work Authorization Program**

Bidders are informed that pursuant to Section 285.530, RSMo, as a condition of the award of any contract in excess of five thousand dollars (\$5,000.00), the successful bidder shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection to the contracted services. Successful bidders shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection to the contracted services.

### **Safety Training**

Bidders are informed that the Project is subject to the requirements of Section 292.675, RSMo, which requires all contractors or subcontractors doing work on the Project to provide, and require its on-site employees to complete, a ten (10) hour course in construction safety and health approved by the Occupational Safety and Health Administration (“OSHA”) or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. The training must be completed within sixty (60) days of the date work on the Project commences. On-site employees found on the worksite without documentation of the required training shall have twenty (20) days to produce such documentation.

A “**Notice to Proceed**” is anticipated to be on or about **April 23, 2018** but an exact date will be decided at the “Preconstruction Meeting”. Work shall continue uninterrupted according to the Specifications.

Bid security in the amount of five (5%) percent of the Base Bid offered by the bidder as indicated on the Bid Proposal form shall accompany the bid submittal. Bid security shall be in the form of a bank draft or certified check drawn upon a responsible, solvent bank and payable to the City of Ballwin, Missouri or a satisfactory Bid Bond executed by the bidder and by a good and sufficient surety authorized to do business in Missouri.

The successful bidder shall be required to furnish within ten (10) days of notification of contract award a satisfactory Payment, Performance and Guarantee Bond in the full amount of the Bid based on the bid quantities listed on the Bid Proposal form. The Payment, Performance and Guarantee Bond furnished shall meet all requirements of section 107.170 of the Revised Statutes of Missouri, as amended, and shall guarantee the faithful performance of the work including payment of prevailing wage requirements of the State of Missouri. No bid submitted shall be withdrawn after the opening of bids for a period of ninety (90) calendar days after the closing of the scheduled time for accepting bids.

The City of Ballwin will affirmatively assure that in any contract entered into pursuant to this Notice to Contractors, qualified minority business enterprises will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color, religion, sex, age, disability, familial status, national origin or political affiliation. If you are a person that requires an accommodation or desires more information, please call (636) 227-8580V or RELAY MISSOURI 1-800-735-2966 TDD not later than 5:00 P.M. on the third day preceding the last day for accepting bids. Offices are open between 8:00 A.M. and 5:00 P.M. Monday through Friday.

The City of Ballwin intends to award a contract for the Project based on the bid that, in the City of Ballwin’s sole discretion, best meets the interests and requirements of the City. The City of Ballwin reserves the right in the City’s sole discretion to reject any and all bids, to waive technicalities or deficiencies in any or all bids, to negotiate with any or all bidders or others for more favorable terms or prices, and to award a contract to other than the bidder submitting the lowest cost bid proposal, with or without negotiation. The City of Ballwin reserves the right not to open a sole bid.



CITY OF BALLWIN, MISSOURI  
INSTRUCTIONS TO BIDDERS

For “2018 **BALLWIN CITY HALL PROJECT**” Project (the “Project”) in the City of Ballwin, Missouri.

**1. General**

A. All work shall be constructed and completed in accordance with the specifications for the same, relating to the construction of such improvements.

B. **A pre-bid meeting** will be held at **2:00 P.M.** (prevailing local time) on **March 13, 2018** at the Ballwin Police Department in the Boardroom, 300 Park Drive Ballwin, MO 63011 with a site walkthrough immediately following the meeting. Site address is 77 Seven Trails Drive, Ballwin, MO.

C. **Bid due date** is **March 27, 2018**, at **2:00 P.M.** (Prevailing local time).

**2. Scope of Work**

The Project consists of construction of a new City Hall facility and associated site improvements. The building is approximately 9,964 SF one-story steel framed structure with masonry and architectural sheet metal exterior. The City reserves the right to increase or decrease the scope of work at any time.

**3. Approximate Quantities**

All quantities are approximate. Quantities provided in the Bid Proposal form are not guaranteed by the City of Ballwin and are used solely for the purpose of comparing bids and may or may not represent the actual quantities encountered on the Project. The City of Ballwin shall pay according to the actual work in place.

**4. Material Purchases**

The Contractor shall be responsible for paying all material suppliers. The Contractor shall pay all taxes required by law. **For Sales Tax: see Special Sales Tax Provisions, paragraph 24.**

**5. Land and Rights-of-Way**

For the purposes of operating and maintaining the Project, the City of Ballwin shall acquire the necessary lands, easements and rights-of-way privileges required for the same. The Contractor shall furnish and construct any necessary access roads or facilities.

**6. Obtaining Bid Documents**

Bid Documents include the Notice to Contractors, the Instructions to Bidders, the General Conditions, the Plans and Specifications, the Bid Proposal form, the Bid Bond, the proposed

City-Contractor Agreement, the Bidders Information Sheet form, Exhibits, and any Addenda issued prior to receipt of bid proposals and all modifications. Copies of the Bid Documents may be obtained at the Drexel Technologies online plan room. (<https://planroom.drexeltech.com>) Drexel will maintain a list of all persons and organizations who have obtained copies of the Bid Documents.

## 7. Bid Proposals

A. Sealed bid proposals will be received in accordance with the Notice to Contractors.

B. Bids shall be submitted on the accompanying Bid Proposal forms. Bids shall be sealed in an envelope bearing only the printed endorsement "BID OPENING "**BALLWIN CITY HALL PROJECT**"ATTENTION: CITY ENGINEER". In the case of proposals to be sent by mail, the envelope shall be placed in an outer or mailing envelope, and endorsed as noted above.

C. Bid security in the amount of five (5%) percent of the Base Bid [*exclusive of numbered Alternates*] as indicated on the Bid Proposal form shall accompany the bid submittal. Bid security shall be in the form of a bank draft or certified check and drawn upon a responsible, solvent bank and payable to the City of Ballwin, Missouri or a satisfactory Bid Bond executed by the bidder and by a good and sufficient surety authorized to do business in Missouri. The bid security shall be refunded or returned to the bidder upon the faithful performance of the conditions of the Bid Proposal to the satisfaction of the City of Ballwin.

D. The successful bidder shall be required within ten (10) days of receipt of written notification of award from the City of Ballwin to execute the AIA Agreement and to furnish a satisfactory Payment, Performance and Guarantee Bond with a good and sufficient surety authorized to do business in the State of Missouri in the full amount of the bid submitted based on the bid quantity listed on the Bid Proposal form. The Payment, Performance and Guarantee Bond furnished shall meet all requirements of section 107.170 and 290.250 of the Revised Statutes of Missouri, as amended, and shall guarantee the faithful performance of the Work including payment of prevailing wage requirements of the State of Missouri. In case of failure or neglect to execute the City-Contractor Agreement or to furnish a satisfactory Payment, Performance and Guarantee Bond within the time above specified, such bidder will be considered as having abandoned the bid, and the bid security provided shall thereupon be forfeited to the City of Ballwin and collected as provided by law, and thereupon the Project shall be re-advertised or otherwise let to another bidder.

E. DELETED

F. No bid shall be considered unless the offering bidder shall furnish evidence satisfactory to the City of Ballwin that the bidder has the necessary facilities, ability and pecuniary resources to fulfill the conditions of the Contract Documents. The low bidder or any other bidder may be required to submit financial statements.

G. DELETED

H. DELETED

I. No bid shall be withdrawn after the opening of bids for a period of ninety (90) calendar days after the closing time for acceptance of bids. Any bidder may withdraw a bid personally or by telegraphic or written request at any time prior to the closing time for the acceptance of bids.

J. DELETED

K. The successful bidder shall be required to comply with all applicable State provisions concerning the payment of prevailing wages on public works projects. All workers performing work under the City-Contractor Agreement shall be paid not less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri. A copy of the applicable Annual Wage Order and Incremental Increases for each occupational title required under this project is included as Exhibit G in the Bid Documents and shall be included in the Contract Documents.

L. The Contractor and each subcontractor engaged on the Project shall keep posted in a prominent and easily accessible place at the Project site a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed on the construction of the Project. The statement shall remain continuously posted during the full time that any worker shall be employed on the Project.

M. The Contractor and each subcontractor shall submit to the City of Ballwin monthly during the construction of the Project certified copies of payroll records for all workers employed on the Project. The Contractor shall forfeit, as a penalty, to the City of Ballwin the sum of One Hundred Dollars (\$100.00) for each worker employed by the Contractor or by any subcontractor for each working day or portion thereof that such worker is paid less than the prevailing hourly rate of wages as determined by the Department of Labor and Industrial Relations of the State of Missouri for work performed under the City Contractor Agreement

**8. DELETED**

**9. Bidder's Duties**

A. Bidders shall thoroughly examine the Plans and Specifications for the Project, and also the Project site, shall inform themselves fully of the conditions relating to construction and labor under which the Work will be performed and shall judge for themselves all the circumstances affecting the cost and nature of the Work and the Project. By submitting a bid, each bidder represents that the bidder has inspected the Project site and is thoroughly familiar with the Bid Documents and all requirements for performance of the Work and failure of the bidder to do so shall not relieve the successful bidder of the obligation to furnish all labor, materials and equipment necessary to carry out the provisions of the Contract Documents and to complete the Project in accordance with the Contract Documents for the consideration set forth in the bid submitted.

B. The Contractor shall employ, insofar as possible, such methods and means in carrying out the Work as will not cause any interruption or any interference with any other contractor.

C. In a case of doubt as to the true meaning of any part of the Plans and Specifications, or any other of the Bid Documents, any person who has obtained a copy of the Bid Documents may submit to the City of Ballwin a written request for an interpretation thereof. The person submitting the request shall be responsible for its prompt delivery. Any such interpretation will be rendered only by written addendum duly issued and a copy of such addendum will be mailed or delivered to each person listed by the City of Ballwin as having obtained a copy of the Bid Documents. The City of Ballwin shall not be responsible for any other explanation or interpretation of the Bid Documents.

D. To be considered, each bid submitted shall be accompanied by at least three (3) references regarding prior work of the bidder on contracts in Missouri.

#### **10. Bidder Disqualifications**

No contract will be awarded by the City of Ballwin to any person, firm or corporation: (i) who has been delinquent or unfaithful in any other prior contract for construction with the City of Ballwin; (ii) who has defaulted as surety or otherwise upon any contractual monetary obligation to the City of Ballwin; (iii) who appears on the Missouri Secretary of State's list of violators of the Prevailing Wage Law; or (iv) who is not authorized to do business in the State of Missouri.

#### **11. Return of Bid Security**

The City of Ballwin shall return the bid security of all except the three apparent lowest bidders for the Project within three (3) business days after the opening of bids. Bid security of the three apparent lowest Bidders shall be returned within 48 hours after the City of Ballwin has accepted a Payment, Performance and Guarantee Bond and has approved and executed a City-Contractor Agreement.

#### **12. Right To Reject Bids**

The City of Ballwin intends to award a contract based on the bid that, in the City of Ballwin's sole discretion, best meets the interests and requirements of the City. The City of Ballwin reserves the right in the City's sole discretion to reject any and all bids, to waive technicalities or deficiencies in any or all bids, to negotiate with any or all bidders or others for more favorable terms or prices, and to award a contract to other than the bidder submitting the lowest cost bid proposal, with or without negotiation. The City of Ballwin reserves the right not to open a sole bid.

#### **13. Insurance**

The Owner will provide the Builder's Risk policy.

The Contractor shall obtain and maintain during the term of the Project and the City-Contractor Agreement the insurance coverages set forth in this paragraph 13. Insurance policies providing required coverages shall be with companies licensed to do business in the State of Missouri and rated AA by Best or equivalent. All costs of obtaining and maintaining insurance coverages

shall be included in the bid and no additional payment will be made therefor by the City of Ballwin.

Minimum coverages and amounts

Employer's Liability	\$2,000,000 each person
Comprehensive Automobile Liability Insurance	\$2,000,000 each person
Bodily Injury	\$2,000,000 each accident
Property Damage	\$1,000,000 each accident
Comprehensive General Liability Insurance	\$2,000,000 each person
Bodily Injury	\$2,000,000 each person
Property Damage	\$1,000,000 each aggregate

In addition, the Contractor and all subcontractors shall provide Worker's Compensation Insurance in at least statutory amounts for all workers employed at the Project site.

Before commencing any work, the Contractor shall provide to the City of Ballwin certificates of insurance evidencing the issuance and maintenance in force of the coverages required by this paragraph 13. Each such certificate shall show the City of Ballwin as an additional insured and shall bear an endorsement precluding cancellation of or change in coverage without at least thirty (30) days written notice to the City of Ballwin.

**14. DELETED**

**15. DELETED**

**16. Observation and Final Inspection**

A. The City of Ballwin shall have access at all times to the Project for the purpose of observation. The Contractor shall provide proper and adequate facilities for such access and observation.

B. The Owner shall provide the services of an independent testing laboratory qualified to perform sampling and tests required by the St. Louis County specifications. C. When the Contractor has completed all Work, the City of Ballwin shall make a final inspection to determine conformity to the Contract Documents.

**17. Coordination**

A. The Contractor shall contact and coordinate with all affected utilities prior to commencing any operations.



B. The Contractor shall coordinate operations with the City of Ballwin. As a minimum, the Contractor shall notify the City Engineer at least 72 hours prior to commencement of work. The Contractor shall additionally provide the City Engineer with the name and telephone number of a responsible contact person for after hours and weekend emergencies.

## **18. Hours of Work**

The Contractor shall only perform work or move any equipment between 7:00 am and 5:00 P.M. Monday through Friday unless the contractor obtains the written consent of the City Engineer and the City. No work may be done on Saturdays, Sundays, City holidays, or after normal working hours unless approved by the City Engineer in advance. Request for work on the weekend or holidays must be submitted for approval on Thursday, prior to the date when work is requested.

## **19. Notification to Residents**

The Contractor shall notify in writing, all residents whose property is affected by the work at least 48 hours prior to commencement of any operation that will affect the residents' property. The City of Ballwin, before commencement of work on the Project shall review and approve the form of all such notices. The Contractor should contact the City Engineer about the applicability of this section prior to beginning any work.

## **20. DELETED**

## **21. Inspection and Maintenance**

A. The City of Ballwin will provide inspection on this Project. The Contractor shall be responsible for notifying the City Engineer a minimum of 72 hours prior to scheduling of a required inspection.

B. Any material or workmanship which the City Engineer determines does not meet requirements of the Specifications will be rejected. At the direction of the City Engineer, the Contractor shall remove and replace the rejected material with acceptable material at no cost to the City.

C. The Contractor shall be responsible for keeping adjacent City facilities clean of dirt, dust and construction debris at all times during construction up until the final approval and acceptance by the City. Should any accumulation be deemed excessive, the City Engineer may direct the Contractor to remove the dirt, dust or construction debris at no cost to the City.

## **22. DELETED**

## **23. Progress Payments**

A. The Contractor shall submit requests for payment not more than once monthly. All requests for payment shall be itemized and shall reflect an estimate of the proportionate value of work actually performed at the Project site through the last day of the previous month. With

each monthly request, the Contractor shall additionally submit partial lien waivers for work covered by the request for payment. Lien waivers for all Work shall be required prior to final acceptance. Five percent (5%) of the amount of each monthly request for payment shall be withheld until after completion by the Contractor and acceptance by the City of Ballwin of all Work.

B. No progress payment made by the City of Ballwin, except the certificate of final payment, shall be evidence of the satisfactory performance of the Work, either wholly or in part. No payment made by the City of Ballwin shall be construed to be an acceptance of work or materials determined to be defective or improper.

#### **24. Special Sales Tax Provisions**

The City of Ballwin intends to take maximum advantage of the City's sales tax exemption status. Accordingly, CONTRACTORS SHALL NOT INCLUDE SALES TAX IN BID PROPOSAL AMOUNTS. Compliance with these procedures is COMPULSORY and for the benefit of the City of Ballwin.

##### REQUIREMENTS INCLUDE:

A. CITY OF BALLWIN shall:

Furnish the Contractor a "Project Tax Exemption Certificate" which shall include the following:

1. City of Ballwin's name, address, Missouri tax identification number and signature of authorized representative;
2. The project location, description, and unique identification number;
3. The date the City-Contractor Agreement is entered into, which is the earliest date materials may be purchased for the project on a tax-exempt basis;
4. The estimated date of completion for the Project;
5. The Tax Exemption Certificate expiration date. Such certificate is renewable for a given project at the option of the City of Ballwin, only for the purpose of revising the certificate expiration date as necessary to complete the Project.

B. THE CONTRACTOR shall:

1. Furnish the Project Tax Exemption Certificate to all subcontractors. The Contractor and any subcontractor purchasing materials shall present, on behalf of the City of Ballwin, all tangible personal property and materials to be incorporated into or consumed in the construction of the Project and no other on a tax-exempt basis. **SUPPLIERS SHALL EXECUTE TO THE PURCHASING CONTRACTOR OR SUBCONTRACTOR INVOICES MADE OUT TO THE CONTRACTOR. THE INVOICES MUST ALSO BEAR THE NAME OF THE CITY OF BALLWIN AND THE PROJECT IDENTIFICATION NUMBER.** Nothing in this section shall be deemed to exempt the

purchase of any construction machinery, equipment, or tools used in constructing, repairing or remodeling facilities for the City of Ballwin. All invoices for all personal property and materials purchased for the Project utilizing the Project Tax Exemption Certificate shall be retained by the purchasing Contractor or subcontractor for a period of five (5) years and shall be subject to audit by the Missouri Director of Revenue.

- a. Any excess re-salable tangible personal property or materials which were purchased for the Project by the Contractor or subcontractor under the Project Tax Exemption Certificate but which were not incorporated into or consumed in the construction of the Project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be paid by the Contractor or subcontractor not later than the due date on the Contractor or subcontractor's Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in the Project.
  - b. No Contractor, subcontractor or material supplier shall, upon audit, be required to pay tax on tangible personal property and materials incorporated into or consumed in the construction of the Project, due to the failure of the City of Ballwin to revise the certificate expiration date as necessary to complete any work required. If it is determined that tax is owed on such property and materials due to the failure of the City of Ballwin to revise such certificate expiration date, the City of Ballwin shall be liable for the tax owed.
2. Order all necessary materials and equipment (materials) to complete the Work and the Project in accordance with the Plans and Specifications.
  3. Inspect all delivered materials for conformance to specifications, damage, or breakage and subsequently accept materials if found to be satisfactory.
    - a. Purchase of materials on behalf of the City of Ballwin shall not relieve the Contractor of obligations to order, schedule deliveries, inspect, accept, or reject, store, handle or install materials or perform any other duties required by the Contract Documents or customarily performed in conjunction with providing materials to complete the Work.
    - b. Costs of complying with the foregoing Special Sales Tax Provisions shall be included in the Bid Proposal submitted and the Contractor shall not be entitled to receive additional compensation for such compliance.

## **25. OSHA Compliance**

The City of Ballwin supports safety in the workplace as set forth in the Occupation Safety & Health Act (OSHA). A record of violations, without evidence of correction measures taken, may result in the rejection of a contractor's bid.

**26. Missouri Statute Section 292.675 Compliance**

If bidder is awarded the subject contract, it must provide, for itself and all subcontractors performing work on this project, proof that a 10-hour OSHA Construction Safety Program, or similar program approved by the Department of Labor & Industrial Relations, has been completed by all onsite employees prior to beginning work, but not later than 60 days of beginning work on this construction project. Contractors and subcontractors in violation of this provision will forfeit to the City of Ballwin \$2,500.00 plus \$100.00 a day for each employee who is employed without training. The City of Ballwin may withhold assessed penalties from the payment due to the bidder and/or any subcontractors employed thereby. The bidder shall complete and submit with their bid the attached "AFFIDAVIT OF WORK AUTHORIZATION".

**27. Waste Disposal**

It is the contractor's responsibility to dispose of any hazardous waste generated as a result of the project in compliance with all federal, state and local regulations for waste disposal. A hazardous waste disposal plan must be submitted to the City Engineer for approval, prior to beginning the project.

**28. Post Contractor Selection Pre-Construction Meeting**

A pre-construction meeting will be scheduled prior to issuance of the notice to proceed.

**29. DELETED**

**30. Compliance with Civil Rights Statutes.**

The Contractor shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, et seq.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.).

**AFFIDAVIT OF WORK AUTHORIZATION**

Comes now Thomas J. Kraska (name) as President

(office held) first being duly sworn, on my oath, affirm

K&S Associates, Inc. (company name) is enrolled and will continue to participate in a federal work authorization program in respect to employees that will work in connection with the contracted services related to Ballwin City Hall for the duration of the contract, if awarded in accordance with RSMo Chapter 285.530 (2). I also affirm that K&S Associates, Inc. (company name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services related to Ballwin City Hall for the duration of the contract, if awarded.

*In Affirmation thereof, the facts stated above are true and correct (The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo).*

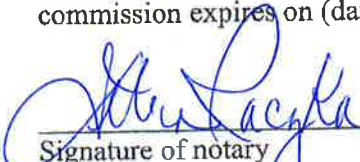
 4-6-18  
Signature (person with authority)

Thomas J. Kraska  
Printed Name

President  
Title

April 6, 2018  
Date

Subscribed and sworn to before me this (day) of (month, year). I am commissioned as a notary public within the County of (name of county), State of (name of State), and my commission expires on (date).

  
Signature of notary

4-6-18  
Date

