

## Addendum D1

re: **City of Berne**  
**New Municipal Maintenance Building**  
335003.00

date: **February 8, 2024**

This Addendum forms a part of the Contract Documents for the above-referenced project and is issued in accordance with the Instructions to Bidders. Acknowledge receipt of this addendum by inserting its number in the space provided in the bid form.

ITEM	LOCATION	DESCRIPTION
A1.01	GENERAL Pre-Bid Meeting Memorandum and Sign-In Sheet	<b><u>ADD:</u></b>  Included as part of this addendum is the Pre-Bid Meeting Memorandum and Pre-Bid Sign-In Sheet dated February 6, 2024. These documents shall be considered an integral part of the Construction Documents.
A1.02	CERTIFICATION PAGE <b>(Page reissued)</b>	<b><u>CHANGE:</u></b>  Certification Page <b>reissued</b> as part of this addendum to CHANGE the Architectural certification stamp and signature to Kevin L. Runkel in lieu of Jeff E. Schroeder.
A1.03	BIDDING REQUIREMENTS AND FORMS Notice to Bidders <b>(Document Reissued)</b> & Supplementary Bid Form Bid Date	<b><u>CHANGE:</u></b>  The Bid date will be changed from Thursday, February 29, 2024 to <b>Thursday, March 7, 2024</b> at 2:00 p.m. (Eastern Standard Time).  Supplementary Bid Form to be <b>reissued</b> in the last Addendum. This document shall be used when submitting a bid for the project and shall be considered an integral part of the Construction Documents.
A1.04	BIDDING REQUIREMENTS AND FORMS Instructions to Bidders (AIA Document A701) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under Project: information CHANGE the location of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.



ITEM	LOCATION	DESCRIPTION
A1.05	BIDDING REQUIREMENTS AND FORMS Supplementary Bid Form	<p><b><u>ADD:</u></b></p> <p>ADD type of contract to the Supplementary Bid Form as follows:</p> <p>Circle the appropriate Bid Category:    Bid 1 – Site Construction  Bid 2 – General Construction  Bid 3 – Fire Protection Construction  Bid 4 – Plumbing/Mechanical Construction  Bid 5 – Electrical Construction</p> <p>Supplementary Bid Form to be <b><i>reissued</i></b> in the last Addendum. This document shall be used when submitting a bid for the project and shall be considered an integral part of the Construction Documents.</p>
A1.06	BIDDING REQUIREMENTS AND FORMS Contractor's Qualification Statement (AIA Document A305) <b><i>(Document Reissued)</i></b>	<p><b><u>CHANGE:</u></b></p> <p>On Exhibit C, CHANGE the location of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.</p>
A1.07	BIDDING REQUIREMENTS AND FORMS Proposal Request (AIA Document G709) <b><i>(Document Reissued)</i></b>	<p><b><u>CHANGE:</u></b></p> <p>Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.</p>
A1.08	BIDDING REQUIREMENTS AND FORMS Construction Change Directive (AIA Document G714) <b><i>(Document Reissued)</i></b>	<p><b><u>CHANGE:</u></b></p> <p>Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.</p>
A1.09	BIDDING REQUIREMENTS AND FORMS Change Order (AIA Document G701) <b><i>(Document Reissued)</i></b>	<p><b><u>CHANGE:</u></b></p> <p>Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.</p>



ITEM	LOCATION	DESCRIPTION
A1.10	BIDDING REQUIREMENTS AND FORMS Architect's Supplemental Instructions (AIA Document G710) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.
A1.11	BIDDING REQUIREMENTS AND FORMS Certificate of Substantial Completion (AIA Document G704) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.
A1.12	BIDDING REQUIREMENTS AND FORMS Application and Certificate for Payment (AIA Document G702) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.
A1.13	GENERAL CONDITIONS General Conditions of the Contract for Construction (AIA Document A201) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under PROJECT: information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.
A1.14	GENERAL CONDITIONS Performance Bond (AIA Document A312) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under CONSTRUCTION CONTRACT information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.
A1.15	GENERAL CONDITIONS Payment Bond (AIA Document A312) <b>(Document Reissued)</b>	<b><u>CHANGE:</u></b>  Under CONSTRUCTION CONTRACT information CHANGE the address of City of Berne Municipal Maintenance Building to 865 Berne Street in lieu of 535 Fulton.

ITEM	LOCATION	DESCRIPTION
A1.16	SPECIFICATIONS Section 011000 Summary <b>(Specification Reissued)</b>	<b><u>CLARIFICATION:</u></b>  Specification Section 011000 – Summary <b>reissued</b> as part of this addendum to clarify type of contract and project location.
A1.17	SPECIFICATIONS Section 011200 Multiple Contract Summary <b>(New Specification)</b>	<b><u>ADD:</u></b>  ADD the attached new Specification Section 011200 – Multiple Contract Summary, dated <b>02/08/24 (Issued via Addendum D1)</b> as an integral part of the Construction Documents.  This Specification Section shall be included as an integral part of the original Table of Contents issued 01/30/2024.
<b><u>CIVIL ITEMS:</u></b>		
C1.01	DRAWING C301 <b>(Drawing Reissued)</b>	<b><u>REVISE:</u></b>  REVISE Proposed Stormwater Storage Calculation to include updated 10 year predeveloped rate.
C1.02	DRAWING C401 <b>(Drawing Reissued)</b>	<b><u>REVISE:</u></b>  REVISE CB#1 and CB#2 structure information to include specified grate.  <b><u>REVISE:</u></b>  REVISE Orifice Sizing Calculations – CB#1 to include updated site discharge rate.  <b><u>ADDED:</u></b>  ADDED Detail callout 6/SD102.  <b><u>ADDED:</u></b>  ADDED Detail callout 7/SD102.  <b><u>REMOVED:</u></b>  REMOVED Restrictor plate detail from plan sheet.

ITEM	LOCATION	DESCRIPTION
C1.03	DRAWING C402 <i>(Drawing Reissued)</i>	<b><u>REVISE:</u></b>  REVISE CB#1 and CB#2 structure information to include specific grate.
C1.04	DRAWING SD102 <i>(Drawing Reissued)</i>	<b><u>ADDED:</u></b>  ADDED Detail 6/SD102 – 2-Stage Outfall Configuration.  ADDED Detail 7/SD102 – Restrictor Plate Details.

ITEM	LOCATION	DESCRIPTION
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Submitted by:  
**The Moake Park Group, Inc.**



Kevin L. Runkel, AIA  
Principal

attachments: Pre-Bid Meeting Memorandum  
Sign-In Sheet  
**(Reissued)** Certification Page  
**(Reissued)** Notice to Bidders  
**(Reissued)** Instructions to Bidders (AIA Document A701)  
**(Reissued)** Contractor's Qualification Statement (AIA Document A305)  
**(Reissued)** Proposal Request (AIA Document G709)  
**(Reissued)** Construction Change Directive (AIA Document G714)  
**(Reissued)** Change Order (AIA Document G701)  
**(Reissued)** Architect's Supplemental Instructions (AIA Document G710)  
**(Reissued)** Certificate of Substantial Completion (AIA Document G704)  
**(Reissued)** Application and Certificate for Payment (AIA Document G702)  
**(Reissued)** General Conditions of the Contract for Construction (AIA Document A201)  
**(Reissued)** Performance Bond (AIA Document A312)  
**(Reissued)** Payment Bond (AIA Document A312)  
**(Reissued)** Specification Section 011000 - Summary  
**(New)** Specification Section 011200 – Multiple Contract Summary  
**(Reissued)** Drawing C301  
**(Reissued)** Drawing C401  
**(Reissued)** Drawing C402  
**(Reissued)** Drawing SD102

copies: All Plan Holders  
335003/670

## Pre-Bid Meeting Memorandum

date: February 6, 2024

re: **City of Berne**  
**New Municipal Maintenance Building**  
**MPG Project #335003**

purpose: **Pre-Bid Meeting**

Owner: **City of Berne**

- Greg Sprunger - Mayor

Architect: **Moake Park Group, Inc.**

- Kevin L. Runkel – Architect of Record

Mechanical/Electrical: **SCO Engineering, LLC**

- Doug G. Kelsey – Mechanical Engineer
- Tom P. Offerle – Electrical Engineer

Civil/Structural/Landscape **Jones Petrie Rafinski**

- Claire E. Eltzroth – Civil Engineer
- Jordan L. Maxson – Structural Engineer
- Nathan Deig – Landscape Architect

1. The Project consists of General, Mechanical, Plumbing, Fire Protection and Electrical Work required for the New Municipal Maintenance Building Project.
2. The project manual currently calls for this Project to be constructed under a General Construction Contract. The Owner has elected as of yesterday, February 5, 2024, to change to a Multiple Prime Contract.
3. The bids will be received on a lump sum basis. Each proposal shall include all labor, material; and services necessary to complete the project in strict accordance with the Construction Drawings. Prime Bids will be received per Specification Section 011200 – Multiple Contract Summary which will be issued via Addendum no later than Friday, February 9, 2024.
4. Bids will be received until 2:00 P.M. (Eastern Standard Time) on Thursday, March 7, 2024 at the following address:  
  
City of Berne  
158 West Franklin Street  
Berne, IN 46711
5. All Bids received at such place, date and time will be publicly opened and read aloud in the Board Meeting Room. Bids received after such time will be returned to the respective Bidder, unopened.
6. As of January 30, 2024, complete and detailed Bidding Documents have been on file and may be examined by prospective Bidders at the following locations:



Office of the Architect

MOAKE PARK GROUP, INC.  
7223 Engle Road, Suite 200  
Fort Wayne, Indiana 46804

Office of the Owner

CITY OF BERNE  
158 West Franklin Street  
Berne, Indiana 46711

7. Bidders may obtain complete sets of Bidding Documents from Eastern Engineering, 1239 Wells Street, Fort Wayne, IN 46808, 260-426-3119, or from their web site plan room at [www.easternengineering.com](http://www.easternengineering.com) in accordance with the Instructions to Bidders. A maximum of 3 complete sets of documents will be issued to General Contractors; a maximum of 1 complete set will be issued to mechanical/electrical contractors. The Contractor is responsible for the cost of Bid Documents.
8. Each Bid must be accompanied by a bid security, which shall not be less than five percent (5%) of the Base Bid, in the required form and submitted in accordance with the Instructions to Bidders.
9. The Bidders to whom an award is made, shall furnish a 100% Performance Bond & Labor and Material Payment Bond in accordance with the Instructions to Bidders.
10. No Bid shall be modified, withdrawn or canceled for a period of sixty (60) calendar days after the date and time set for receipt of Bids.
11. Bidders and sub-contractors shall not discriminate in employment practices.
12. The Bidder shall submit a properly executed Contractor's Qualification Statement, AIA Document A305.
13. The City of Berne reserves the right to reject any and all Bids; is not obligated to accept the lowest or any other Bid; and may waive any formalities in bidding procedures.
14. Questions during the bidding process are to be submitted in writing / email preferred, to the Project Architect, Kevin L. Runkel. [krunkel@moakepark.com](mailto:krunkel@moakepark.com) Questions are to include the MPG Project #335003 – City of Berne New Municipal Maintenance Building in the heading or subject line.
15. An addendum will be issued this week which will include the following:
  - a. New specification section 011200 – Multiple Contract Summary
  - b. Change the bid date from February 29, 2024 to March 7, 2024.
16. All questions from contractors are due no later than 12:00 p.m. on Tuesday, February 27, 2024 to allow the Design Team time to respond via written addendum no later than February 29, 2024.
17. Questions during the Pre-Bid Meeting will not be answered verbally. All answers will be provided by written addendum.
18. Civil Scope Summary.
19. Architectural Scope Summary.

**Pre-Bid Meeting Memorandum**  
**City of Berne**  
**New Municipal Maintenance Building**  
February 6, 2024  
Page 3

20. Alternates:

- a. Alternate No. 1 – Pre-Engineered Metal Building (PEMB) – Butler Manufacturing.
- b. Alternate No. 2 – Pre-Engineered Metal Building (PEMB) – Nucor Building Systems.
- c. Alternate No. 3 – 4'-0" high split face cmu waincot.
- d. Alternate No. 4 – Manual flush valves for all water closets and urinals.
- e. Alternate No. 5 – Painted pavement markings in lieu of thermoplastic.
- f. Alternate No. 6 – Pre-Engineered Metal Building (PEMB) – Kirby Building Systems.
- g. Alternate No. 7 – Pre-Engineered Metal Building (PEMB) – American Buildings, a division of Nucor.

21. MEP Scope Summary.

Questions:

Submitted by:

**Moake Park Group, Inc.**



Kevin L. Runkel, AIA  
LEED AP CPTED Specialist  
Principal

Any additions or corrections to this memorandum must be submitted, in writing, to Moake Park Group, Inc. within ten (10) days of issue date; otherwise, this memorandum shall stand as correct.

issue date: February 8, 2024

copies: Those in Attendance  
335003/750

City of Berne  
 New Municipal Maintenance Building  
 Berne, IN

February 6, 2024

### PRE-BID SIGN IN SHEET

Name:	PAUL JANKE	Company:	CME
Address:	7235 VICKSBURG <sup>PIKE</sup>	Email:	PJANKE@CMEBUILDRIGHT.COM
City/State/Zip:	FORT WAYNE, IN 46804	Phone:	260-442-1292
		Fax:	
Name:	Brian Barkel	Company:	SCO
Address:		Email:	
City/State/Zip:		Phone:	260-436-9213
		Fax:	
Name:	Paul Schwarte	Company:	Margolis Builders
Address:		Email:	
City/State/Zip:		Phone:	260-589-8510
		Fax:	
Name:	NATHAN DEIB	Company:	JPR
Address:		Email:	
City/State/Zip:		Phone:	260-422-2522
		Fax:	
Name:	Shannon Smitley	Company:	City of Berne
Address:		Email:	
City/State/Zip:		Phone:	
		Fax:	
Name:	MIKE RALSTON	Company:	BRANDT CONSTRUCTION
Address:		Email:	miker@brandtconstruction.com
City/State/Zip:		Phone:	317-246-6279
		Fax:	
Name:	Mike Dubach	Company:	Dubach Excavating LLC
Address:	5390 s. 4100 w.	Email:	Dubachexc@gmail.com
City/State/Zip:	Berne In 46711	Phone:	260-525-0202
		Fax:	





February 6, 2024

[illegible]

PROJECT MANUAL

for

**CITY OF BERNE**  
**New Municipal Maintenance Building**

Berne, IN

Commission No.: 335003.00

January 30, 2024

*Prepared by:*

**The Moake Park Group, Inc.**

7223 Engle Road, Suite 200  
Fort Wayne, Indiana 46804

*These Plans Certified By:*



**Kevin L. Runkel**  
Indiana Registration  
Architect No. AR11200146



**Nathan G. Deig**  
Indiana Registration  
Architect No. LA12900014



**Andrew G. Cunningham**  
Indiana Registration  
Architect No. LA21300012



**Jordan L. Maxon**  
Indiana Registration  
Engineer No. PE11400392



**Thomas P. Offerle**  
Indiana Registration  
Engineer No. 10303150



**Douglas D. Kelsey**  
Indiana Registration  
Engineer No. PE60910070



NOTICE TO BIDDERS:

Notice is hereby given that the City of Berne, 158 West Franklin Street, Berne, Indiana 46711, will receive sealed Bids for the New Municipal Maintenance Building located at, 865 Berne St., Berne, Indiana 46711.

The Project consists of General, Mechanical, Plumbing, Fire Protection and Electrical Work required for the New Municipal Maintenance Building Project.

This project will be constructed with multiple Prime Contracts:

- (1) Site Construction
- (2) General Construction
- (3) Fire Protection Construction
- (4) Plumbing / Mechanical Construction
- (5) Electrical Construction

The Bids will be received on a lump sum basis. Each proposal shall include all labor, material; and services necessary to complete the project in strict accordance with the Construction Drawings.

Bids will be received at the following place, date and time:

PLACE: 158 West Franklin Street  
DATE: Thursday, March 7, 2024  
TIME: 2:00 p.m. (Eastern Standard Time)

PROPOSALS ADDRESSED TO:

City of Berne  
158 West Franklin Street  
Berne, IN 46711

All Bids received at such place, date and time will be publicly opened and read aloud in the Board Meeting Room. Bids received after such time will be returned to the respective Bidder, unopened.

Beginning January 30, 2024, complete and detailed Bidding Documents will be on file and may be examined by prospective Bidders at the following locations:

Office of the Architect

MOAKE PARK GROUP, INC.  
7223 Engle Road, Suite 200  
Fort Wayne, Indiana 46804

Owner

City of Berne  
158 West Franklin Street  
Berne, Indiana 46711

Bidders may obtain complete sets of Bidding Documents from Eastern Engineering, 1239 Wells Street, Fort Wayne, IN 46808, 260-426-3119, or from their web site plan room at [www.easternengineering.com](http://www.easternengineering.com) in accordance with the Instructions to Bidders. A maximum of 3 complete sets of documents will be issued to General Contractors; a maximum of 1 complete set will be issued to mechanical/electrical contractors. The Contractor is responsible for the cost of Bid Documents.

Each Bid must be accompanied by a bid security, which shall not be less than five percent (5%) of the Base Bid, in the required form and submitted in accordance with the Instructions to Bidders.

The Bidder to whom an award is made, shall furnish a 100% Performance Bond & Labor and Material Payment Bond in accordance with the Instructions to Bidders.

No Bid shall be modified, withdrawn or canceled for a period of sixty (60) calendar days after the date and time set for receipt of Bids.

Bidders and sub-contractors shall not discriminate in employment practices.

The Bidder shall submit a properly executed Contractor's Qualification Statement, AIA Document A305.

Prime Contractors may attend the pre-bid conference with representatives of the Owner, Architect and Engineers to discuss construction sequence, security, contractor's work and storage areas and requirements for contractor's personnel working on the Project. No additional costs of any type will be allowed by the failure of the Bidder to avail themselves of the privilege of on-site inspection and pre-bid conference.

A Pre-bid conference will start at 1:30 p.m. Tuesday, February 6, 2024 in the Board Meeting Room located at 158 West Franklin Street, Berne, IN 46711. The site will be available for observation following the pre-bid conference.

The City of Berne reserves the right to reject any and all Bids; is not obligated to accept the lowest or any other Bid; and may waive any formalities in bidding procedures.

City of Berne  
158 West Franklin Street  
Berne, Indiana 46711

END OF NOTICE TO BIDDERS



# AIA® Document A701® – 2018

## Instructions to Bidders

for the following Project:

*(Name, location, and detailed description)*

City of Berne Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

### THE OWNER:

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

City of Berne  
158 West Franklin Street  
Berne, IN 46711

### THE ARCHITECT:

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

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

### TABLE OF ARTICLES

- 1 DEFINITIONS
- 2 BIDDER'S REPRESENTATIONS
- 3 BIDDING DOCUMENTS
- 4 BIDDING PROCEDURES
- 5 CONSIDERATION OF BIDS
- 6 POST-BID INFORMATION
- 7 PERFORMANCE BOND AND PAYMENT BOND
- 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

### 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.

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™–2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.

## ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deleted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

## ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:

- .1 the Bidder has read and understands the Bidding Documents;
- .2 the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- .3 the Bid complies with the Bidding Documents;
- .4 the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
- .5 the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- .6 the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

## ARTICLE 3 BIDDING DOCUMENTS

### § 3.1 Distribution

§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall obtain Bidding Documents.)*

Complete sets of Bidding Documents may be obtained by Bidders from the office of Eastern Engineering Supply, located at 1239 Wells Street, Fort Wayne, Indiana 46808. Phone: (260) 426-3119, Fax: (260) 426-3101, Easton Hawk, Easton.Hawk@easternengineering.com. The Contractor is responsible for the cost of all bid documents.

**§ 3.1.2** Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder's deposit will be refunded.

**§ 3.1.3** Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

**§ 3.1.4** Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

**§ 3.1.5** The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

**§ 3.2 Modification or Interpretation of Bidding Documents**

**§ 3.2.1** The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

**§ 3.2.2** Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids. *(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)*

Requests can be submitted to the Project Architect:

Kevin Runkel  
Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804  
krunkel@moakepark.com  
Phone: 260.424.6516

**§ 3.2.3** Modifications and interpretations of the Bidding Documents shall be made by Addendum. Modifications and interpretations of the Bidding Documents made in any other manner shall not be binding, and Bidders shall not rely upon them.

**§ 3.3 Substitutions**

**§ 3.3.1** The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

**§ 3.3.2 Substitution Process**

**§ 3.3.2.1** Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

**§ 3.3.2.2** Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

**§ 3.3.2.3** If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.



§ 3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.4 If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

#### § 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Addenda will be transmitted.)*

Addenda will be posted to Eastern Engineering's website and emailed by Eastern Engineering to all plan holders.

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

### ARTICLE 4 BIDDING PROCEDURES

#### § 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change" or as required by the bid form.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

#### § 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by the following bid security:

*(Insert the form and amount of bid security.)*

**§ 4.2.2** The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. In the event the Owner fails to comply with Section 6.2, the amount of the bid security shall not be forfeited to the Owner.

**§ 4.2.3** If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 4.2.4** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning days after the opening of Bids, withdraw its Bid and request the return of its bid security.

### **§ 4.3 Submission of Bids**

**§ 4.3.1** A Bidder shall submit its Bid as indicated below:

*(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit their Bid.)*

Paper Copy

**§ 4.3.2** Paper copies of the Bid, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.3** Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

**§ 4.3.4** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.5** A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

### **§ 4.4 Modification or Withdrawal of Bid**

**§ 4.4.1** Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

**§ 4.4.2** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

**§ 4.4.3** After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:

*(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)*

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 Opening of Bids**

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

### **§ 5.2 Rejection of Bids**

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.

### **§ 5.3 Acceptance of Bid (Award)**

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

**§ 5.3.2** Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## **ARTICLE 6 POST-BID INFORMATION**

### **§ 6.1 Contractor's Qualification Statement**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted for this Bid.

### **§ 6.2 Owner's Financial Capability**

A Bidder to whom award of a Contract is under consideration may request in writing, fourteen days prior to the expiration of the time for withdrawal of Bids, that the Owner furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Owner shall then furnish such reasonable evidence to the Bidder no later than seven days prior to the expiration of the time for withdrawal of Bids. Unless such reasonable evidence is furnished within the allotted time, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### **§ 6.3 Submittals**

**§ 6.3.1** After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

**§ 6.3.4** Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## **ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND**

### **§ 7.1 Bond Requirements**

**§ 7.1.1** If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

**§ 7.1.2** If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

**§ 7.1.3** The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 7.1.4** Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.

*(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)*

### **§ 7.2 Time of Delivery and Form of Bonds**

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

**§ 7.2.3** The bonds shall be dated on or after the date of the Contract.

**§ 7.2.4** The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney.

## **ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS**

**§ 8.1** Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

- .1** AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*
- .2** AIA Document A101™–2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*
- .3** AIA Document A201™–2017, General Conditions of the Contract for Construction, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*

| *(Paragraphs Deleted)*

| *(Paragraph Deleted)*

| *(Table Deleted)*

| *(Paragraph Deleted)*

| *(Table Deleted)*

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| *(Paragraphs Deleted)*

| *(Paragraph Deleted)*

| *(Table Deleted)*

|

|

(Table Deleted)

|

(Paragraphs Deleted)

# **Additions and Deletions Report for**

## **AIA® Document A701® – 2018**

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 07:46:17 ET on 02/08/2024.

### **PAGE 1**

City of Berne Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

...

City of Berne  
158 West Franklin Street  
Berne, IN 46711

...

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

### **PAGE 2**

Complete sets of Bidding Documents may be obtained by Bidders from the office of Eastern Engineering Supply, located at 1239 Wells Street, Fort Wayne, Indiana 46808. Phone: (260) 426-3119, Fax: (260) 426-3101, Easton Hawk, Easton.Hawk@easternengineering.com. The Contractor is responsible for the cost of all bid documents.

### **PAGE 3**

Requests can be submitted to the Project Architect:  
Kevin Runkel  
Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804  
krunkel@moakepark.com  
Phone: 260.424.6516

### **PAGE 4**

Addenda will be posted to Eastern Engineering's website and emailed by Eastern Engineering to all plan holders.

~~4~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

*(Insert the date of the E203-2013.)*

...

~~5~~ Drawings

...

Number

Title

Date

...

~~6~~ Specifications

...

Section

Title

Date

Pages

...

~~7~~ Addenda:

...

Number

Date

Pages

...



~~8~~ Other Exhibits:

...

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

...

☐ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below: \_\_

...

*(Insert the date of the E204-2017.)*

...

☐ The Sustainability Plan: \_\_

...

PAGE 9

Title

Date

Pages

☐ Supplementary and other Conditions of the Contract: \_\_

...

Document

Title

Date

Pages

...

~~9~~ Other documents listed below:

...

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

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

### **AIA® Document D401™ – 2003**

I, Kevin L. Runkel, AIA and Principal, 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 07:46:17 ET on 02/08/2024 under Order No. 4104246878 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A701™ - 2018, Instructions to Bidders, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Kevin L. Runkel, AIA and Principal  
(Title)

February 8, 2024  
(Dated)

# DRAFT AIA® Document A305® – 2020

## Contractor's Qualification Statement

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

### SUBMITTED BY:

(Organization name and address.)

<< >>

### SUBMITTED TO:

(Organization name and address.)

<< >>

### TYPE OF WORK TYPICALLY PERFORMED

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

<< >>

### THIS CONTRACTOR'S QUALIFICATION STATEMENT INCLUDES THE FOLLOWING:

(Check all that apply.)

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

### CONTRACTOR CERTIFICATION

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

Organization's Authorized Representative  
Signature

Date

<< >>

Printed Name and Title

### NOTARY

State of: << >>

County of: << >>

Signed and sworn to before me this << >> day of << >>

Notary Signature

My commission expires: << >>

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# DRAFT AIA® Document A305® – 2020

## Exhibit A

### General Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

#### § A.1 ORGANIZATION

##### § A.1.1 Name and Location

§ A.1.1.1 Identify the full legal name of your organization.

« »

§ A.1.1.2 List all other names under which your organization currently does business and, for each name, identify jurisdictions in which it is registered to do business under that trade name.

« »

§ A.1.1.3 List all prior names under which your organization has operated and, for each name, indicate the date range and jurisdiction in which it was used.

« »

§ A.1.1.4 Identify the address of your organization's principal place of business and list all office locations out of which your organization conducts business. If your organization has multiple offices, you may attach an exhibit or refer to a website.

« »

##### § A.1.2 Legal Status

§ A.1.2.1 Identify the legal status under which your organization does business, such as sole proprietorship, partnership, corporation, limited liability corporation, joint venture, or other.

« »

- 1 If your organization is a corporation, identify the state in which it is incorporated, the date of incorporation, and its four highest-ranking corporate officers and their titles, as applicable.

« »

- 2 If your organization is a partnership, identify its partners and its date of organization.

« »

- 3 If your organization is individually owned, identify its owner and date of organization.

« »

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- .4 If the form of your organization is other than those listed above, describe it and identify its individual leaders:

<< >>

§ A.1.2.2 Does your organization own, in whole or in part, any other construction-related businesses? If so, identify and describe those businesses and specify percentage of ownership.

<< >>

### § A.1.3 Other Information

§ A.1.3.1 How many years has your organization been in business?

<< >>

§ A.1.3.2 How many full-time employees work for your organization?

<< >>

§ A.1.3.3 List your North American Industry Classification System (NAICS) codes and titles. Specify which is your primary NAICS code.

<< >>

§ A.1.3.4 Indicate whether your organization is certified as a governmentally recognized special business class, such as a minority business enterprise, woman business enterprise, service disabled veteran owned small business, woman owned small business, small business in a HUBZone, or a small disadvantaged business in the 8(a) Business Development Program. For each, identify the certifying authority and indicate jurisdictions to which such certification applies.

<< >>

### § A.2 EXPERIENCE

§ A.2.1 Complete Exhibit D to describe up to four projects, either completed or in progress, that are representative of your organization's experience and capabilities.

§ A.2.2 State your organization's total dollar value of work currently under contract.

<< >>

§ A.2.3 Of the amount stated in Section A.2.2, state the dollar value of work that remains to be completed:

<< >>

§ A.2.4 State your organization's average annual dollar value of construction work performed during the last five years.

<< >>

### § A.3 CAPABILITIES

§ A.3.1 List the categories of work that your organization typically self-performs.

<< >>

§ A.3.2 Identify qualities, accreditations, services, skills, or personnel that you believe differentiate your organization from others.

<< >>

**§ A.3.3** Does your organization provide design collaboration or pre-construction services? If so, describe those services.

<< >>

**§ A.3.4** Does your organization use building information modeling (BIM)? If so, describe how your organization uses BIM and identify BIM software that your organization regularly uses.

<< >>

**§ A.3.5** Does your organization use a project management information system? If so, identify that system.

<< >>

## **§ A.4 REFERENCES**

**§ A.4.1** Identify three client references:

*(Insert name, organization, and contact information)*

<< >>

**§ A.4.2** Identify three architect references:

*(Insert name, organization, and contact information)*

<< >>

**§ A.4.3** Identify one bank reference:

*(Insert name, organization, and contact information)*

<< >>

**§ A.4.4** Identify three subcontractor or other trade references:

*(Insert name, organization, and contact information)*

<< >>

# DRAFT AIA® Document A305® – 2020

## Exhibit B

### Financial and Performance Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

#### § B.1 FINANCIAL

##### § B.1.1 Federal tax identification number:

« »

§ B.1.2 Attach financial statements for the last three years prepared in accordance with Generally Accepted Accounting Principles, including your organization's latest balance sheet and income statement. Also, indicate the name and contact information of the firm that prepared each financial statement.

« »

§ B.1.3 Has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, been the subject of any bankruptcy proceeding within the last ten years?

« »

§ B.1.4 Identify your organization's preferred credit rating agency and identification information.

(Identify rating agency, such as Dun and Bradstreet or Equifax, and insert your organization's identification number or other method of searching your organization's credit rating with such agency.)

« »

#### § B.2 DISPUTES AND DISCIPLINARY ACTIONS

§ B.2.1 Are there any pending or outstanding judgments, arbitration proceedings, bond claims, or lawsuits against your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A, Section 1.2, in which the amount in dispute is more than \$75,000?  
(If the answer is yes, provide an explanation.)

« »

§ B.2.2 In the last five years has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management:  
(If the answer to any of the questions below is yes, provide an explanation.)

- .1 failed to complete work awarded to it?

« »

- .2 been terminated for any reason except for an owners' convenience?

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<< >>

- .3 had any judgments, settlements, or awards pertaining to a construction project in which your organization was responsible for more than \$75,000?

<< >>

- .4 filed any lawsuits or requested arbitration regarding a construction project?

<< >>

**§ B.2.3** In the last five years, has your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management; or any of the individuals listed in Exhibit A Section 1.2:  
(If the answer to any of the questions below is yes, provide an explanation.)

- .1 been convicted of, or indicted for, a business-related crime?

<< >>

- .2 had any business or professional license subjected to disciplinary action?

<< >>

- .3 been penalized or fined by a state or federal environmental agency?

<< >>



# DRAFT AIA® Document A305® – 2020

## Exhibit C

### Project Specific Information

This Exhibit is part of the Contractor's Qualification Statement, submitted by « » and dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

#### PROJECT:

(Name and location or address.)

«City of Berne Municipal Maintenance Building»  
«865 Berne Street  
Berne, IN 46711»

#### CONTRACTOR'S PROJECT OFFICE:

(Identify the office out of which the contractor proposes to perform the work for the Project.)

« »

#### TYPE OF WORK SOUGHT

(Indicate the type of work you are seeking for this Project, such as general contracting, construction manager as constructor, design-build, HVAC subcontracting, electrical subcontracting, plumbing subcontracting, etc.)

« »

#### CONFLICT OF INTEREST

Describe any conflict of interest your organization, its parent, or a subsidiary, affiliate, or other entity having common ownership or management, or any of the individuals listed in Exhibit A Section 1.2, may have regarding this Project.

« »

#### § C.1 PERFORMANCE OF THE WORK

##### § C.1.1 When was the Contractor's Project Office established?

« »

##### § C.1.2 How many full-time field and office staff are respectively employed at the Contractor's Project Office?

« »

##### § C.1.3 List the business license and contractor license or registration numbers for the Contractor's Project Office that pertain to the Project.

« »

##### § C.1.4 Identify key personnel from your organization who will be meaningfully involved with work on this Project and indicate (1) their position on the Project team, (2)

#### 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.

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their office location, (3) their expertise and experience, and (4) projects similar to the Project on which they have worked.

<< >>

**§ C.1.5** Identify portions of work that you intend to self-perform on this Project.

<< >>

**§ C.1.6** To the extent known, list the subcontractors you intend to use for major portions of work on the Project.

<< >>

## **§ C.2 EXPERIENCE RELATED TO THE PROJECT**

**§ C.2.1** Complete Exhibit D to describe up to four projects performed by the Contractor's Project Office, either completed or in progress, that are relevant to this Project, such as projects in a similar geographic area or of similar project type. If you have already completed Exhibit D, but want to provide further examples of projects that are relevant to this Project, you may complete Exhibit E.

**§ C.2.2** State the total dollar value of work currently under contract at the Contractor's Project Office:

<< >>

**§ C.2.3** Of the amount stated in Section C.2.2, state the dollar value of work that remains to be completed:

<< >>

**§ C.2.4** State the average annual dollar value of construction work performed by the Contractor's Project Office during the last five years.

<< >>

**§ C.2.5** List the total number of projects the Contractor's Project Office has completed in the last five years and state the dollar value of the largest contract the Contractor's Project Office has completed during that time.

<< >>

## **§ C.3 SAFETY PROGRAM AND RECORD**

**§ C.3.1** Does the Contractor's Project Office have a written safety program?

<< >>

**§ C.3.2** List all safety-related citations and penalties the Contractor's Project Office has received in the last three years.

<< >>

**§ C.3.3** Attach the Contractor's Project Office's OSHA 300a Summary of Work-Related Injuries and Illnesses form for the last three years.

**§ C.3.4** Attach a copy of your insurance agent's verification letter for your organization's current workers' compensation experience modification rate and rates for the last three years.

## **§ C.4 INSURANCE**

**§ C.4.1** Attach current certificates of insurance for your commercial general liability policy, umbrella insurance policy, and professional liability insurance policy, if any. Identify deductibles or self-insured retentions for your commercial general liability policy.

§ C.4.2 If requested, will your organization be able to provide property insurance for the Project written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis?

<< >>

§ C.4.3 Does your commercial general liability policy contain any exclusions or restrictions of coverage that are prohibited in AIA Document A101-2017, Exhibit A, Insurance A.3.2.2.2? If so, identify.

<< >>

## § C.5 SURETY

§ C.5.1 If requested, will your organization be able to provide a performance and payment bond for this Project?

<< >>

§ C.5.2 Surety company name:

<< >>

§ C.5.3 Surety agent name and contact information:

<< >>

§ C.5.4 Total bonding capacity:

<< >>

§ C.5.5 Available bonding capacity as of the date of this qualification statement:

<< >>





# AIA® Document A305® – 2020 Exhibit D

## Contractor's Past Project Experience

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				



# AIA® Document A305® – 2020 Exhibit E

## Contractor's Past Project Experience, Continued

	1	2	3	4
PROJECT NAME				
PROJECT LOCATION				
PROJECT TYPE				
OWNER				
ARCHITECT				
CONTRACTOR'S PROJECT EXECUTIVE				
KEY PERSONNEL (include titles)				
PROJECT DETAILS	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work	Contract Amount  Completion Date  % Self-Performed Work
PROJECT DELIVERY METHOD	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:	<input type="checkbox"/> Design-bid-build <input type="checkbox"/> Design-build <input type="checkbox"/> CM constructor <input type="checkbox"/> CM advisor <input type="checkbox"/> Other:
SUSTAINABILITY CERTIFICATIONS				

# DRAFT AIA® Document G709™ – 2018

## Proposal Request

**PROJECT:** *(name and address)*  
 City of Berne  
 Municipal Maintenance Building  
 865 Berne Street  
 Berne, IN 46711

**CONTRACT INFORMATION:**  
 Contract For: General Construction  
 Date:

Architect's Project Number: 335003.00  
 Proposal Request Number: PR-000

Proposal Request Date:

**OWNER:** *(name and address)*  
 City of Berne  
 158 West Franklin Street  
 Berne, IN 46711

**ARCHITECT:** *(name and address)*  
 The Moake Park Group, Inc.  
 7223 Engle Road, Suite 200  
 Fort Wayne, IN 46804

**CONTRACTOR:** *(name and address)*

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within seven (7) days or notify the Architect in writing of the anticipated date of submission.  
*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*

### ATTACHMENTS:

In response to this request, the Contractor represents that he has re-examined ALL aspects of this project including Drawings, Specifications, Project and Field Conditions. Contractor further represents that he has included ALL applicable Labor, Materials, etc., necessary to complete this proposed work, including that which may be required of other contractors, sub-contractors, etc., in the completion of this work.

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

**REQUESTED BY THE ARCHITECT:**

**PRINTED NAME AND TITLE**

# DRAFT AIA® Document G714® – 2017

## Construction Change Directive

**PROJECT:** *(name and address)*  
City of Berne  
Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

**CONTRACT INFORMATION:**  
Contract For: General Construction  
  
Date:

**CCD INFORMATION:**  
Directive Number: CCD-000  
  
Date:

**OWNER:** *(name and address)*  
City of Berne  
158 West Franklin Street  
Berne, IN 46711

**ARCHITECT:** *(name and address)*  
The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

**CONTRACTOR:** *(name and address)*

The Contractor is hereby directed to make the following change(s) in this Contract:  
*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits.)*

### PROPOSED ADJUSTMENTS

1. The proposed basis of adjustment to the Contract Sum or Guaranteed Maximum Price is:

- ☒ Lump Sum decrease of \$0.00
- ☐ Unit Price of \$        per
- ☐ Cost, as defined below, plus the following fee:  
*(Insert a definition of, or method for determining, cost)*

☐ As follows:

2. The Contract Time is proposed to remain unchanged. The proposed adjustment, if any, is (0 days).

*NOTE: The Owner, Architect and Contractor should execute a Change Order to supersede this Construction Change Directive to the extent they agree upon adjustments to the Contract Sum, Contract Time, or Guaranteed Maximum price for the change(s) described herein.*

When signed by the Owner and Architect and received by the Contractor, this document becomes effective IMMEDIATELY as a Construction Change Directive (CCD), and the Contractor shall proceed with the change(s) described above.

Contractor signature indicates agreement with the proposed adjustments in Contract Sum and Contract Time set forth in this CCD.

The Moake Park Group, Inc.  
**ARCHITECT** *(Firm name)*

City of Berne  
**OWNER** *(Firm name)*

**CONTRACTOR** *(Firm name)*

SIGNATURE

SIGNATURE

SIGNATURE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

PRINTED NAME AND TITLE

DATE

DATE

DATE



# DRAFT AIA® Document G701® – 2017

## Change Order

**PROJECT:** *(Name and address)*

City of Berne  
Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

**CONTRACT INFORMATION:**

Contract For: General Construction

Date:

**CHANGE ORDER INFORMATION:**

Change Order Number: CO-000

Date:

**OWNER:** *(Name and address)*

City of Berne  
158 West Franklin Street  
Berne, IN 46711

**ARCHITECT:** *(Name and address)*

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

**CONTRACTOR:** *(Name and address)*
**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)*

The original Contract Sum was

\$ 0.00

The net change by previously authorized Change Orders

\$ 0.00

The Contract Sum prior to this Change Order was

\$ 0.00

The Contract Sum will be increased by this Change Order in the amount of

\$ 0.00

The new Contract Sum including this Change Order will be

\$ 0.00

The Contract Time will be increased by Zero (0) days.

The new date of Substantial Completion will be

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

The Moake Park Group, Inc.

**ARCHITECT** *(Firm name)*

**CONTRACTOR** *(Firm name)*

City of Berne

**OWNER** *(Firm name)*

**SIGNATURE**

**SIGNATURE**

**SIGNATURE**

**PRINTED NAME AND TITLE**

**PRINTED NAME AND TITLE**

**PRINTED NAME AND TITLE**

**DATE**

**DATE**

**DATE**

# DRAFT AIA® Document G710™ – 2017

## Architect's Supplemental Instructions

**PROJECT:** *(name and address)*  
 City of Berne  
 Municipal Maintenance Building  
 865 Berne Street  
 Berne, IN 46711

**CONTRACT INFORMATION:**  
 Contract For: General Construction  
  
 Date:

**ASI INFORMATION:**  
 ASI Number: ASI-000  
  
 Date:

**OWNER:** *(name and address)*  
 City of Berne  
 158 West Franklin Street  
 Berne, IN 46711

**ARCHITECT:** *(name and address)*  
 The Moake Park Group, Inc.  
 7223 Engle Road, Suite 200  
 Fort Wayne, IN 46804

**CONTRACTOR:** *(name and address)*

The Contractor shall carry out the Work in accordance with the following supplemental instructions without change in Contract Sum or Contract Time. Proceeding with the Work in accordance with these instructions indicates your acknowledgment that there will be no change in the Contract Sum or Contract Time.

*(Insert a detailed description of the Architect's supplemental instructions and, if applicable, attach or reference specific exhibits.)*

### ATTACHMENTS:

In response to this request, the Contractor represents that he has re-examined ALL aspects of this project including Drawings, Specifications, Project and Field Conditions. Contractor further represents that he has included ALL applicable Labor, Materials, etc., necessary to complete this proposed work, including that which may be required of other contractors, sub-contractors, etc., in the completion of this work.

### ISSUED BY THE ARCHITECT:

The Moake Park Group, Inc.  
**ARCHITECT** *(Firm name)*

**SIGNATURE**

**PRINTED NAME AND TITLE**

**DATE**

# DRAFT AIA® Document G704® – 2017

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(name and address)</i> City of Berne Municipal Maintenance Building 865 Berne Street Berne, IN 46711	<b>CONTRACT INFORMATION:</b> Contract For: General Construction  Date:	<b>CERTIFICATE INFORMATION:</b> Certificate Number:  Date:
<b>OWNER:</b> <i>(name and address)</i> City of Berne 158 West Franklin Street Berne, IN 46711	<b>ARCHITECT:</b> <i>(name and address)</i> The Moake Park Group, Inc. 7223 Engle Road, Suite 200 Fort Wayne, IN 46804	<b>CONTRACTOR:</b> <i>(name and address)</i>

The Work identified below has been reviewed and found, to the Architect's best knowledge, information, and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate.

*(Identify the Work, or portion thereof, that is substantially complete.)*

The Moake Park Group,  
Inc.

\_\_\_\_\_  
**ARCHITECT** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE OF SUBSTANTIAL COMPLETION**

### WARRANTIES

The date of Substantial Completion of the Project or portion designated above is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

*(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*

### WORK TO BE COMPLETED OR CORRECTED

A list of items to be completed or corrected is attached hereto, or transmitted as agreed upon by the parties, and identified as follows:

*(Identify the list of Work to be completed or corrected.)*

The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment, whichever occurs first. The Contractor will complete or correct the Work on the list of items attached hereto within ( ) days from the above date of Substantial Completion.

Cost estimate of Work to be completed or corrected: \$

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall be as follows:

*(Note: Owner's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*

The Owner and Contractor hereby accept the responsibilities assigned to them in this Certificate of Substantial Completion:

\_\_\_\_\_  
**CONTRACTOR** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
City of Berne

\_\_\_\_\_  
**OWNER** *(Firm Name)*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**PRINTED NAME AND TITLE**

\_\_\_\_\_  
**DATE**

Application and Certificate for Payment

TO OWNER:

City of Berne  
158 West Franklin Street  
Berne, IN 46711

PROJECT:

City of Berne Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711  
The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

APPLICATION NO:

000

PERIOD TO:

Distribution to:

OWNER: ☐ ARCHITECT: ☐ CONTRACTOR: ☐ FIELD: ☐ OTHER: ☐

FROM CONTRACTOR:

VIA ARCHITECT:

CONTRACT FOR:

General Construction

CONTRACT DATE:

PROJECT NOS:

335003.00 /

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703®, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM

\$0.00

2. NET CHANGE BY CHANGE ORDERS

\$0.00

3. CONTRACT SUM TO DATE (Line 1 ± 2)

\$0.00

4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)

\$0.00

5. RETAINAGE:

a. 0 % of Completed Work (Column D + E on G703)

\$0.00

b. 0 % of Stored Material (Column F on G703)

\$0.00

Total Retainage (Lines 5a + 5b or Total in Column I of G703)

\$0.00

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

8. CURRENT PAYMENT DUE

\$0.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE

\$0.00

AMOUNT CERTIFIED

\$0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order		\$0.00

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

City of Berne  
Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

### THE OWNER:

*(Name, legal status and address)*

City of Berne  
158 West Franklin Street  
Berne, IN 46711

### THE ARCHITECT:

*(Name, legal status and address)*

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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- 13 MISCELLANEOUS PROVISIONS

### ADDITIONS AND DELETIONS:

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

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

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

## 14 TERMINATION OR SUSPENSION OF THE CONTRACT

## 15 CLAIMS AND DISPUTES



Init.

/

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**User Notes:**

(3B9ADA4F)

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

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

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

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

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

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

### **§ 1.7 Digital Data Use and Transmission**

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

## **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

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

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,



assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

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

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

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

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

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

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

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

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

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

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

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

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

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

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

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

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

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

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

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

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### **§ 3.8 Allowances**

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

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

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

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

### **§ 3.9 Superintendent**

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

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

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

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

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

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

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.11 Documents and Samples at the Site**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

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

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

### **§ 3.18 Indemnification**

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

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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

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

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the

Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

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

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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



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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### **§ 5.3 Subcontractual Relations**

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

prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

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

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

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

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

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

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

#### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work,

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

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

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

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

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

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

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

### **§ 7.1 General**

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

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

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

### **§ 7.2 Change Orders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will

affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

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

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

### **§ 8.2 Progress and Completion**

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

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

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

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

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

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

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

### **§ 9.2 Schedule of Values**

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

unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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

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

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

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

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

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

### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

## **§ 9.5 Decisions to Withhold Certification**

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

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

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

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

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

## **§ 9.6 Progress Payments**

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

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

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

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

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

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

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

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

### **§ 9.7 Failure of Payment**

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

### **§ 9.8 Substantial Completion**

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

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

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

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

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



### **§ 9.9 Partial Occupancy or Use**

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

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

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

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

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

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

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

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

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

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

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

### **§ 10.1 Safety Precautions and Programs**

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

### **§ 10.2 Safety of Persons and Property**

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

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

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

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

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

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

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

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

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

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

### **§ 10.3 Hazardous Materials and Substances**

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

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

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

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

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

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

### **§ 10.4 Emergencies**

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

## **ARTICLE 11 INSURANCE AND BONDS**

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

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

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

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

### **§ 11.2 Owner's Insurance**

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

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

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

### **§ 11.3 Waivers of Subrogation**

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

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

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

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

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

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

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

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

### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to

the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

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

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

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

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

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

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

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

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

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

## **§ 12.3 Acceptance of Nonconforming Work**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

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

## **§ 13.2 Successors and Assigns**

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

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

## **§ 13.3 Rights and Remedies**

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

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

## **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

## **§ 13.5 Interest**

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

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

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

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

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

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

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

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

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

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

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

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,



the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### **§ 14.3 Suspension by the Owner for Convenience**

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

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

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

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

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

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

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

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

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

##### **§ 15.1.3 Notice of Claims**

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

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

**§ 15.1.4 Continuing Contract Performance**

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

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

**§ 15.1.5 Claims for Additional Cost**

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

**§ 15.1.6 Claims for Additional Time**

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

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

**§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

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

**§ 15.2 Initial Decision**

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

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

Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

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

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

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

### **§ 15.3 Mediation**

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

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

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

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

#### **§ 15.4 Arbitration**

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

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

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

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

#### **§ 15.4.4 Consolidation or Joinder**

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

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

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

# **Additions and Deletions Report for**

## **AIA® Document A201® – 2017**

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 07:58:07 ET on 02/08/2024.

### **PAGE 1**

City of Berne  
Municipal Maintenance Building  
865 Berne Street  
Berne, IN 46711

...

City of Berne  
158 West Franklin Street  
Berne, IN 46711

...

The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

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

**AIA® Document D401™ – 2003**

I, Kevin L. Runkel, AIA and Principal, 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 07:58:07 ET on 02/08/2024 under Order No. 4104246878 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™ - 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

Kevin L. Runkel, AIA and Principal  
(Title)

February 8, 2024  
(Dated)

# DRAFT AIA® Document A312® – 2010

## Performance Bond

**CONTRACTOR:**
*(Name, legal status and address)*

 « »  
« »

**SURETY:**
*(Name, legal status and principal place of business)*

 « »  
« »

**OWNER:**
*(Name, legal status and address)*

 «City of Berne»  
«158 West Franklin Street  
Berne, IN 46711»

**CONSTRUCTION CONTRACT**

Date: « »

Amount: \$ «0.00»

Description:

*(Name and location)*

 «City of Berne Municipal Maintenance Building»  
«865 Berne Street  
Berne, IN 46711»

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

« »

Amount: \$ « »

Modifications to this Bond: « » None « » See Section 16

**CONTRACTOR AS PRINCIPAL**

 Company: *(Corporate Seal)*

Signature:

Name and « »

Title:

**SURETY**

 Company: *(Corporate Seal)*

Signature:

Name and « »

Title:

*(Any additional signatures appear on the last page of this Performance Bond.)*
*(FOR INFORMATION ONLY — Name, address and telephone)*
**AGENT or BROKER:**

 « »  
« »  
« »

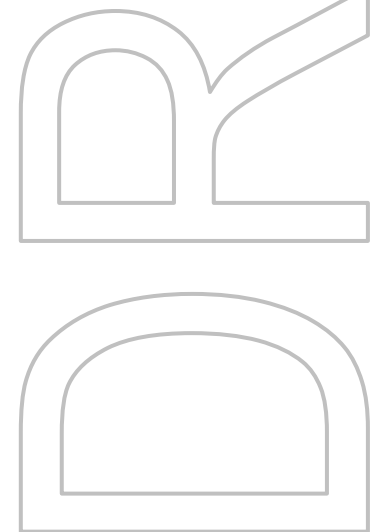
**OWNER'S REPRESENTATIVE:**
*(Architect, Engineer or other party:)*

 «»  
«»  
«»  
«»  
«»  
«»

**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.

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.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.



§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, 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.

#### § 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

**§ 16** Modifications to this bond are as follows:

4

# DRAFT AIA® Document A312® – 2010

## Payment Bond

**CONTRACTOR:**

(Name, legal status and address)

« »  
« »

**SURETY:**

(Name, legal status and principal place of business)

« »  
« »

**OWNER:**

(Name, legal status and address)

«City of Berne»  
«158 West Franklin Street  
Berne, IN 46711»

**CONSTRUCTION CONTRACT**

Date: « »

Amount: \$ «0.00»

Description:

(Name and location)

«City of Berne Municipal Maintenance Building»  
«865 Berne Street  
Berne, IN 46711»

**BOND**

Date:

(Not earlier than Construction Contract Date)

« »

Amount: \$ « »

Modifications to this Bond: « » None « » See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and « »  
Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »  
Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

« »  
« »  
« »

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

« »  
« »  
« »  
« »  
« »  
« »

**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.

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.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, 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.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## § 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

« »

*(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)*

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature:

Name and Title: « »« »

Address: « »

Signature:

Name and Title: « »« »

Address: « »

SECTION 011000 - SUMMARY

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

A. Section Includes:

1. Project information.
2. Type of Contract.
3. Work covered by Contract Documents.
4. Access to site.
5. Coordination with occupants.
6. Work restrictions.
7. Specification and drawing conventions.

B. Related Requirements:

1. Division 01 Section "Temporary Facilities and Controls" for limitations and procedures governing temporary use of Owner's facilities.

1.3 PROJECT INFORMATION

A. Project Identification: New Municipal Maintenance Building

1. Project Location: 865 Berne Street  
Berne, IN 46711

B. Owner: City of Berne

1. Owner's Representative:

Mayor Gregg A. Sprunger  
City of Berne  
158 West Franklin Street  
Berne, IN 46711

C. Architect: The Moake Park Group, Inc.  
7223 Engle Road, Suite 200  
Fort Wayne, IN 46804

D. Architect's Consultants: The Architect has retained the following design professionals who have prepared designated portions of the Contract Documents:

1. Mechanical, Electrical, Plumbing Engineer:

- a. SCO Engineering, LLC  
6534 Constitution Drive  
Fort Wayne, IN 46804

2. Civil Engineer:

- a. Jones Petrie Rafinski  
222 Pearle Street  
Fort Wayne, IN 46802

3. Structural Engineer:

- b. Jones Petrie Rafinski  
222 Pearle Street  
Fort Wayne, IN 46802

1.4 TYPE OF CONTRACT

A. Project will be construction under a multiple prime contract.

- 1. Site Construction.
- 2. General Construction.
- 3. Fire Protection Construction.
- 4. Plumbing / Mechanical Construction.
- 5. Electrical Construction.

1.5 WORK COVERED BY CONTRACT DOCUMENTS

A. The Work of Project is defined by the Contract Documents and consists of the following:

- 1. The work of this project consists of a 22,851 g.s.f. new maintenance building for the City of Berne.

1.6 ACCESS TO SITE

A. General: Contractor shall have limited use of Project site for construction operations as indicated on Drawings by the Contract limits and as indicated by requirements of this Section.

B. Use of Site: Limit use of Project site to work in areas indicated. Do not disturb portions of Project site beyond areas in which the Work is indicated.

- 1. Driveways, Walkways and Entrances: Keep driveways, loading areas and entrances serving premises clear and available to Owner, Owner's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
  - a. Schedule deliveries to minimize use of driveways and entrances by construction operations.
  - b. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.



- C. Condition of Existing Building: Maintain portions of existing building affected by construction operations in a weathertight condition throughout construction period. Repair damage caused by construction operations.

1.7 COORDINATION WITH OCCUPANTS

- A. Full Owner Occupancy: Owner will occupy building site and adjacent building(s) during entire construction period. Cooperate with Owner during construction operations to minimize conflicts and facilitate Owner usage. Perform the Work so as not to interfere with Owner's day-to-day operations. Maintain existing exits unless otherwise indicated.

1. Maintain access to existing walkways, corridors, and other adjacent occupied or used facilities. Do not close or obstruct walkways, corridors, or other occupied or used facilities without written permission from Owner and approval of authorities having jurisdiction.
2. Notify Owner not less than 72 hours in advance of activities that will affect Owner's operations.

1.8 WORK RESTRICTIONS

- A. Work Restrictions, General: Comply with restrictions on construction operations.

1. Comply with limitations on use of public streets and with other requirements of authorities having jurisdiction.

- B. On-Site Work Hours: Limit work on the project to normal business working hours of 6:00 a.m. to 5:00 p.m., Monday through Friday, unless otherwise indicated. Coordinate deliveries to the site and arrival of workers to occur at times other than those of school arrival and dismissal. NOTE: If deemed necessary to meet the project schedule and pre-determined dates set forth by the City of Berne, 2<sup>nd</sup> and 3<sup>rd</sup> shift work will be allowed and encouraged.

- C. Existing Utility Interruptions: Do not interrupt utilities serving facilities occupied by Owner or others unless permitted under the following conditions and then only after providing temporary utility services according to requirements indicated:

1. Notify Owner not less than two days in advance of proposed utility interruptions.
2. Obtain Architect's written permission before proceeding with utility interruptions.

- D. Noise, Vibration, and Odors: Coordinate operations that may result in high levels of noise and vibration, odors, or other disruption to Owner occupancy with Owner.

1. Notify Owner not less than two days in advance of proposed disruptive operations.
2. Obtain Architect's written permission before proceeding with disruptive operations.

- E. Nonsmoking Building: There is to be no smoking on the school campus including in workman's vehicles. Workers should leave the campus to smoke. Violations may result in being removed from the project.

- F. Controlled Substances: Use of tobacco products and other controlled substances on Project site is not permitted.

- G. Employee Identification: Provide identification tags for Contractor personnel working on Project site. Require personnel to use identification tags at all times.

- 1  
2 H. Employee Screening: Comply with Owner's requirements for drug and background screening of  
3 Contractor personnel working on Project site.

- 4  
5 1. Maintain list of approved screened personnel with Owner's representative.

6  
7 1.9 SPECIFICATION AND DRAWING CONVENTIONS

- 8  
9 A. Specification Content: The Specifications use certain conventions for the style of language and  
10 the intended meaning of certain terms, words, and phrases when used in particular situations.  
11 These conventions are as follows:

- 12  
13 1. Imperative mood and streamlined language are generally used in the Specifications. The  
14 words "shall," "shall be," or "shall comply with," depending on the context, are implied  
15 where a colon (:) is used within a sentence or phrase.  
16 2. Specification requirements are to be performed by Contractor unless specifically stated  
17 otherwise.

- 18  
19 B. Division 01 General Requirements: Requirements of Sections in Division 01 apply to the Work  
20 of all Sections in the Specifications.

- 21  
22 C. Drawing Coordination: Requirements for materials and products identified on Drawings are  
23 described in detail in the Specifications. One or more of the following are used on Drawings to  
24 identify materials and products:

- 25  
26 1. Terminology: Materials and products are identified by the typical generic terms used in  
27 the individual Specifications Sections.  
28 2. Abbreviations: Materials and products are identified by abbreviations published as part of  
29 the U.S. National CAD Standard.  
30 3. Keynoting: Materials and products are identified by reference keynotes referencing  
31 Specification Section numbers found in this Project Manual.

32  
33  
34 PART 2 - PRODUCTS (Not Used)

35  
36  
37 PART 3 - EXECUTION (Not Used)

38 END OF SECTION 011000

1       SECTION 011200 - MULTIPLE CONTRACT SUMMARY

2       PART 1 - GENERAL

3       1.1       RELATED DOCUMENTS

- 4       A.       Drawings and general provisions of the Contract, including General and Supplementary  
5               Conditions and other Division 01 Specification Sections, apply to this Section.

6       1.2       SUMMARY

- 7       A.       This Section includes a summary of each contract, including responsibilities for  
8               coordination and temporary facilities and controls.

- 9       B.       Specific requirements of each contract are also indicated in individual Specification  
10              Sections and on Drawings.

- 11      C.       Related Sections include the following:

- 12           1.       Division 01 Section "Summary" for the Work covered by the Contract Documents,  
13               restrictions on use of the premises, phasing, Owner-occupancy requirements, and  
14               work restrictions.  
15           2.       Division 01 Section "Project Management and Coordination" for general coordination  
16               requirements.  
17           3.       Division 01 Section "Temporary Facilities and Controls" for specific requirements for  
18               temporary facilities and controls.

19      1.3       COORDINATION

- 20      A.       Project Coordinator shall be responsible for coordination between the contracts this phase.

- 21           1.       **General Contractor** shall act as Project Coordinator.

22      1.4       PROJECT COORDINATOR

- 23      A.       Project Coordinator: Full-time Project Coordinator shall be experienced in administration  
24               and supervision of building construction, including mechanical and electrical work.

- 25           1.       Coordination activities of Project Coordinator include, but are not limited to, the  
26               following:

- 27               a.       Provide overall coordination of the Work.  
28               b.       Coordinate shared access to workspaces.  
29               c.       Coordinate product selections for compatibility.  
30               d.       Coordinate, schedule, and approve interruptions of permanent and temporary  
31               utilities, including those necessary to make connections for temporary  
32               services.  
33               e.       Coordinate sequencing and scheduling of the Work. Include the following:

- 1) Initial Coordination Meeting: At earliest possible date, arrange and conduct a meeting with separate contractors for sequencing and coordinating the Work; negotiate reasonable adjustments to schedules.
  - 2) Prepare a combined Contractor's Construction Schedule. Base schedule on Preliminary Construction Schedule. Secure time commitments for performing critical construction activities from separate contractors. Show activities of each contract on a separate sheet. Prepare a simplified summary sheet indicating combined construction activities of contracts.
  - 3) Distribute copies of schedules to Architect, Owner, and separate contractors.
- f. Provide information necessary to adjust, move, or relocate existing utility structures affected by construction.
  - g. Provide progress cleaning of common areas and coordinate progress cleaning of areas or pieces of equipment where more than one contractor has worked.
  - h. Coordinate cutting and patching.
  - i. Coordinate protection of the Work.
  - j. Coordinate preparation of Project Record Documents if information from more than one contractor is to be integrated with information from other contractors to form one combined record.
2. Responsibilities of Project Coordinator for temporary facilities and controls include, but are not limited to, the following:
    - a. Provide common-use field office for use by all personnel engaged in construction activities.
    - b. Provide telephone service for common-use facilities.
    - c. Construction utilities and service charges.
    - d. Construction waste management.
    - e. Internet access.
    - f. All use charges.
- 1.5 GENERAL REQUIREMENTS OF CONTRACTS
- A. Extent of Contract: Unless the Agreement contains a more specific description of the Work, names and terminology on Drawings and in Specification Sections determine which contract includes a specific element of Project.
1. Unless otherwise indicated, the Work described in this Section for each contract shall be complete systems and assemblies, including products, components, accessories, and installation required by the Contract Documents.
  2. Local custom and trade-union jurisdictional settlements do not control the scope of the Work of each contract. When a potential jurisdictional dispute or similar interruption of work is first identified or threatened, affected contractors shall negotiate a reasonable settlement to avoid or minimize interruption and delays.
  3. Cutting and Patching: Each contract shall perform its own cutting.
  4. Through-penetration firestopping for the Work of each contract shall be provided by each contract for its own Work.
  5. Within five working days after preliminary horizontal bar-chart-type construction schedule submittal has been received from Project Coordinator, submit a matching

- 1 preliminary horizontal bar-chart schedule showing construction operations  
2 sequenced and coordinated with overall construction.  
3 6. Project closeout requirements.
- 4 B. Substitutions: Each contractor shall cooperate with other contractors involved to  
5 coordinate approved substitutions with remainder of the Work.
- 6 1. Architect shall coordinate substitutions.
- 7 C. Temporary Facilities and Controls: In addition to specific responsibilities for temporary  
8 facilities and controls indicated in this Section and in Division 01 Section "Temporary  
9 Facilities and Controls," each contractor is responsible for the following:
- 10 1. Installation, operation, maintenance, and removal of each temporary facility usually  
11 considered as its own normal construction activity, and costs and use charges  
12 associated with each facility.  
13 2. Plug-in electric power cords and extension cords, supplementary plug-in task  
14 lighting, and special lighting necessary exclusively for its own activities.  
15 3. Its own field office, complete with necessary furniture, utilities, and telephone  
16 service.  
17 4. Its own storage and fabrication sheds.  
18 5. Temporary enclosures for its own construction activities.  
19 6. General hoisting facilities for its own construction activities, up to 2 tons (2000 kg).  
20 7. Waste disposal facilities, including collection and legal disposal of its own  
21 hazardous, dangerous, unsanitary, or other harmful waste materials.  
22 8. Progress cleaning of its own areas on a daily basis.  
23 9. Secure lockup of its own tools, materials, and equipment.  
24 10. Construction aids and miscellaneous services and facilities necessary exclusively for  
25 its own construction activities.

26 1.6 CONTRACT SCOPE

27 A. SITE CONSTRUCTION BID 1

- 28 1. Work in the Site Construction Contract includes, but is not limited to, the following:
- 29 a. All work associated with Specification Divisions:
- 30 1) Bidding Requirements and Forms.  
31 2) General Conditions.  
32 3) Division 1  
33 4) Divisions 31, 32, 33 and 40.  
34 5) Scope of work shown on the Civil Sheets by Jones Petrie Rafinski  
35 listed on the Title Index Sheet.
- 36 2. All temporary site access, security, and control necessary for the completion of the  
37 project.
- 38 a. All work associated with the installation of exterior utilities including storm  
39 sewer, sanitary sewer (including grinder station), water and gas. Utility  
40 services to be brought to within 5' of building unless otherwise noted.  
41 b. All trenching, and associated conduit necessary for the installation of power,  
42 fiber optic and telephone services.  
43 c. Coordination with local service providers of Adams County, Indiana.

1 d. Work not included – see other bid packages.

2 **B. GENERAL CONSTRUCTION: BID 2**

3 1. Work in the General Construction Contract includes, but is not limited to, the  
4 following:

5 a. All work associated with Specification Divisions:

- 6 1) Bidding Requirements and Forms.
- 7 2) General Conditions.
- 8 3) Division 1
- 9 4) Divisions 2 – 14.
- 10 5) Scope of work shown on Structural Sheets by Jones Petrie Rafinski  
11 and Architectural Sheets by Moake Park Group listed on the Title  
12 Index Sheet.

13 2. Work as previously described as project coordinator.

14 3. All work associated with General Construction including Structure / Masonry /  
15 Concrete.

16 4. All mechanical / plumbing / electrical pads indicated on the Drawings.

17 5. This contractor shall be responsible for all permits, fees, taps, etc. required for the  
18 entire project including all trades.

19 6. Work not included – see other bid packages.

20 7. Masonry installation and materials.

21 **C. FIRE PROTECTION CONSTRUCTION: BID 3**

22 1. Work in the Fire Protection Construction Contract includes, but not limited to the  
23 following:

24 a. All work associated with Specification Divisions:

- 25 1) Bidding Requirements and Forms.
- 26 2) General Conditions.
- 27 3) Division 1
- 28 4) Divisions 21.
- 29 5) Scope of work shown on Fire Protection Sheets by SCO Engineering,  
30 LLC listed on the Title Index Sheet.

31 2. Temporary heating equipment and connections.

32 3. Concrete equipment pads that are required for the plumbing / HVAC equipment and  
33 that are shown on the drawings or noted in the Specifications will be furnished and  
34 Refer to the Electrical Specifications for other work which is the responsibility of this  
35 Contractor.

36 5. This Contractor shall be responsible for all blocking that is not shown on the  
37 drawings but that is required for equipment support.

38 6. This Contractor shall be responsible for all supports off the structure for the fire  
39 protection equipment.

40 7. Work not included – see other bid packages.

41  
42  
43  
44

D. PLUMBING / MECHANICAL CONSTRUCTION: BID 4

1. Work in the Plumbing / Mechanical Construction Contract includes, but not limited to the following:

a. All work associated with Specification Divisions:

- 1) Bidding Requirements and Forms.
- 2) General Conditions.
- 3) Division 1
- 4) Divisions 22 and 23.
- 5) Scope of work shown on Plumbing and Mechanical Sheets by SCO Engineering, LLC listed on the Title Index Sheet.

2. Temporary heating equipment and connections.

3. Concrete equipment pads that are required for the plumbing / HVAC equipment and that are shown on the drawings or noted in the Specifications will be furnished and installed by General Contractor. Pads not shown on the drawings, but are required for equipment installation, shall be the complete responsibility of the Mechanical Contractor.

4. All HVAC curbs penetrations shown on the drawings and noted in the Specifications required for mechanical units are a part of this bid packet.

5. All roof penetrations and modifications shall be a part of this contract. All roof work shall be by General Contractor.

6. Refer to the Electrical Specifications for other work which is the responsibility of this Contractor.

7. This Contractor shall be responsible for all blocking that is not shown on the drawings but that is required for equipment support.

8. Access doors which are required for access to this contractor's work shall be furnished and installed by this Contractor as indicated on drawings. If Mechanical Contractor requires access, Mechanical Contractor shall be responsible.

9. This Contractor shall be responsible for all supports off the structure for the plumbing / mechanical equipment.

10. Temperature control systems and installation.

11. Work not included – see other bid packages.

E. ELECTRICAL CONSTRUCTION: BID 5

1. Work in the Electrical Construction Contract includes, but not limited to the following:

a. All work associated with Specification Divisions:

- 1) Bidding Requirements and Forms.
- 2) General Conditions.
- 3) Division 1
- 4) Divisions 26, 27 and 28.
- 5) Scope of work shown on Electrical Sheets by SCO Engineering, LLC listed on the Title Index Sheet.

2. All temporary lighting and power to temporary equipment and temporary service.

3. All work associated with electrical and technology trades.

4. Concrete equipment pads that are required for the electrical work, and that are shown on the drawings, will be furnished and installed by General Contractor.

- 1 Layout of each pad and the supply of embedments will be the responsibility of the  
2 Electrical Contractor. Any pads not shown on the drawings, but required for  
3 equipment installation, shall be by the Electrical Contractor.  
4 5. All depressions, recesses, openings, etc., in the concrete work required by the  
5 electrician shall be located and provided to General Contractor.  
6 6. This Contractor shall furnish all sleeves, inserts, etc., which occur in a respective  
7 trade's work, to that trade for installation during construction.  
8 7. Each Contractor making utility or construction cuts will be totally responsible for  
9 excavation, install the new service, and compacting the backfill of exposed areas.  
10 8. All sleeves utilized by the Contractor's work shall be sealed watertight, airtight or  
11 firestopped as required by the Specifications.  
12 9. All concrete bases for the light supports concrete encasement of buried conduit if  
13 necessary.  
14 10. All blocking not shown on the drawings but required to support the electrical  
15 equipment shall be the responsibility of this Contractor.  
16 11. Access doors which are necessary to access part of the electrical work shall be by  
17 this Contractor.  
18 12. This Contractor shall be responsible for all supports off the structure for the electrical  
19 equipment.  
20 13. Refer to the Mechanical Specifications and Drawings for other work which is the  
21 responsibility of this bid package.  
22 14. Work not included - see other scopes of work.

23 PART 2 - PRODUCTS (Not Used)

24 PART 3 - EXECUTION (Not Used)

25 END OF SECTION 011200

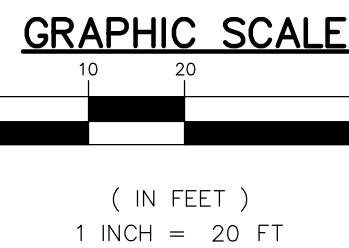


LEGEND

- EXISTING GRADE  
 PROPOSED GRADE  
 EXISTING CATCH BASIN/STORM INLET  
 EXISTING CATCH BASIN/STORM INLET  
 EXISTING STORM HOLE  
 PROPOSED TOP OF CURB  
 PROPOSED FINISHED GRADE  
 PROPOSED EDGE OF PAVEMENT  
 PROPOSED DRAINAGE FLOW ARROW  
 PROPOSED CATCH BASIN/STORM INLET  
 PROPOSED FIRE HYDRANT  
 PROPOSED/EXISTING WATER VALVE

Berne - Proposed Detention Basin				
Detention Basin Stage Volume Calculations				
PROPOSED DETENTION BASIN #1				
Elevation	Distance	Area (Sq.Ft.)	Volume	Cumulative
827	0	2818.06	0	0
828	1	8302.77	5560	5,560
829	1	12711.04	10507	16,067
830	1	18660.82	15686	31,753
831	1	24668.72	21665	53,418
832	Freeboard	Total Volume CFT	53,418	

City of Berne Proposed Stormwater Storage Calculation					
A (ac)	5.51				
Proposed Site Land Use					
Land Use Type	"c" Factor	Area (SFT)			
Building	0.90	19,453			
Asphalt/Concrete	0.90	84,246			
Open Space	0.30	131,957			
Gravel	0.90	4,408			
Total		240,064			
CN	0.56				
			cA	△	
Maximum Allowable Release Rate		0.26 cfs			
10 year predeveloped rate					
Release Rate Utilized		0.26 cfs			
Release Rate =		0.26 cfs			
Storage Requirements					
Storm Duration	100 -Year Intensity (in/hr)	100 -Year Inflow Rate (cfs)	Release Rate (cfs)	Storage Rate (cfs)	Storage Volume (cft)
15 min	5.78	17.99	0.26	17.73	15,957
30 min	4.17	12.98	0.26	12.72	22,896
1 HR	2.79	8.68	0.26	8.42	30,312
2 HR	1.68	5.23	0.26	4.97	35,784
3 HR	1.21	3.77	0.26	3.51	37,908
6 HR	0.72	2.25	0.26	1.99	42,984
12 HR	0.41	1.28	0.26	1.02	44,064
24 HR	0.23	0.72	0.26	0.46	39,744
Maximum storage volume required					44,064
Additional 6% siltation factor					46,708



A PROJECT FOR:



NEW MUNICIPAL MAINTENANCE BUILDING

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mark	date	description
1	02/08/24	PER ADDENDUM 1

GRADING PLAN

date: 1/30/2024  
 project: 2021-0136  
 coordinator: NGD  
 drawn: JUB / RRM  
 checked: NGD

C301







MATCHLINE SEE SHEET C401

UTILITY CROSSING NOTES:

- 1

STORM SEWER  
TOP OF ST PIPE - 833.79  
6" PIPE INV - 833.12
- 2

STORM SEWER  
TOP OF 8" PIPE - 833.72  
8" PIPE INV - 833.05
- SANITARY SEWER  
TOP OF 6" PIPE - 830.29  
6" PIPE INV - 829.79
- SANITARY SEWER  
TOP OF 6" PIPE - 830.48  
6" PIPE INV - 829.98

NEW STORM STRUCTURE INFORMATION

- 6

SD102

CB #1 - 48" CATCH BASIN  
E.I. 0001045 GRATE  
RIM 831.00  
INV 826.34 - 12" HDPE NW  
INV 826.24 - 12" HDPE SW  
W/ ORIFICE PLATE
- CB #2 - 48" CATCH BASIN  
E.I. 0001045 GRATE  
RIM 832.00  
INV 826.18 - 12" HDPE NE  
INV 826.08 - 30" HDPE S
- CB #3 - 72" DOGHOUSE  
MANHOLE  
RIM 833.22  
INV 825.08 - 30" HDPE N  
INV 824.73 - 36" RCP W  
INV 824.73 - 36" RCP E

NEW SANITARY STRUCTURE INFORMATION

- OIL/SAND STR. #101  
RIM 836.22  
INLET INV 829.94  
OUTLET INV 829.69

SAN MANHOLE #1  
48" SANITARY MANHOLE  
RIM 834.19  
INV 829.45 - 6" SDR 35 PVC N  
INV 829.35 - 6" SDR 35 PVC SW
- GRINDER STATION GS-C403-1  
SEE SHEET C403  
RIM 835.00  
INV 828.80 - 6" SDR 35 PVC N  
INV 829.00 - 2" DR 11 HDPE SW

EXISTING SANITARY STRUCTURE INFORMATION

- 1

EXST. STR  
RIM 830.59  
INV 828.29 - 18" RCP N
- EXST. STR  
RIM 830.58  
INV 827.00 - 12" HDPE N  
INV 827.00 - 12" RCP W  
INV 827.00 - 12" RCP E

EXISTING STORM STRUCTURE INFORMATION

- 1

EXST. STR  
RIM 830.59  
INV 828.29 - 18" RCP N
- 2

EXST. STR  
RIM 830.58  
INV 827.00 - 12" HDPE N  
INV 827.00 - 12" RCP W  
INV 827.00 - 12" RCP E

LEGEND

- PROPOSED STORM MANHOLE
- PROPOSED CATCH BASIN
- PROPOSED STORM LINE
- PROPOSED WATER LINE
- PROPOSED SANITARY LINE
- PROPOSED GAS LINE
- PROPOSED ELECTRIC LINE
- PROPOSED FIBER OPTIC LINE
- EXISTING ELECTRICAL CONDUIT
- EXISTING GAS LINE
- EXISTING TELEPHONE
- EXISTING OVERHEAD LINE
- EXISTING STORM SEWER
- EXISTING SANITARY LINE
- EXISTING FIBER OPTIC LINE
- EXISTING WATER LINE

NOTES:

1. CONTRACTOR SHALL MAINTAIN 18" MIN VERTICAL AND 10' MIN HORIZONTAL SEPARATION BETWEEN WATER MAIN AND STORM AND/OR SANITARY SEWER
2. CONTRACTOR SHALL COORDINATE DOWNSPOUT LOCATIONS WITH ARCHITECTURAL PLANS PRIOR TO CONSTRUCTION OF DOWNSPOUT STORM SEWER CONNECTION.
3. CONTRACTOR SHALL COORDINATE WATER AND SANITARY SEWER SERVICE LOCATIONS WITH ARCHITECTURAL & PLUMBING DRAWINGS PRIOR TO CONSTRUCTION.
4. PROTECT ALL EXISTING SITE UTILITY LINES AND/OR SERVICES UNLESS OTHERWISE NOTED ON DEMOLITION PLANS.
5. CONTRACTOR SHALL TAKE CARE DURING INSTALLATION OF NEW SANITARY FORCE MAINS NOT TO INADVERTENTLY CREATE ANY ADDITIONAL HIGH POINTS IN THE FORCE MAINS. ANY HIGH POINTS CREATED SHALL BE ADDRESSED AT THE CONTRACTOR'S EXPENSE AND PURSUANT TO THE DIRECTION OF THE ENGINEER.
6. GRINDER STATION LOCATION SHOWN IN THE DRAWING MAY ONLY BE SHIFTED DURING CONSTRUCTION WITH PRIOR WRITTEN APPROVAL OF THE ENGINEER OF THEIR DULY AUTHORIZED REPRESENTATIVE.

A PROJECT FOR:



NEW MUNICIPAL MAINTENANCE BUILDING

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mark	date	description
1	02/08/24	PER ADDENDUM 1

UTILITY PLAN

date: 1/30/2024

project: 2021-0136

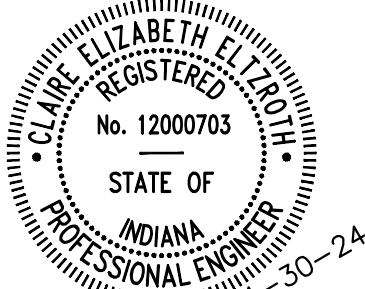
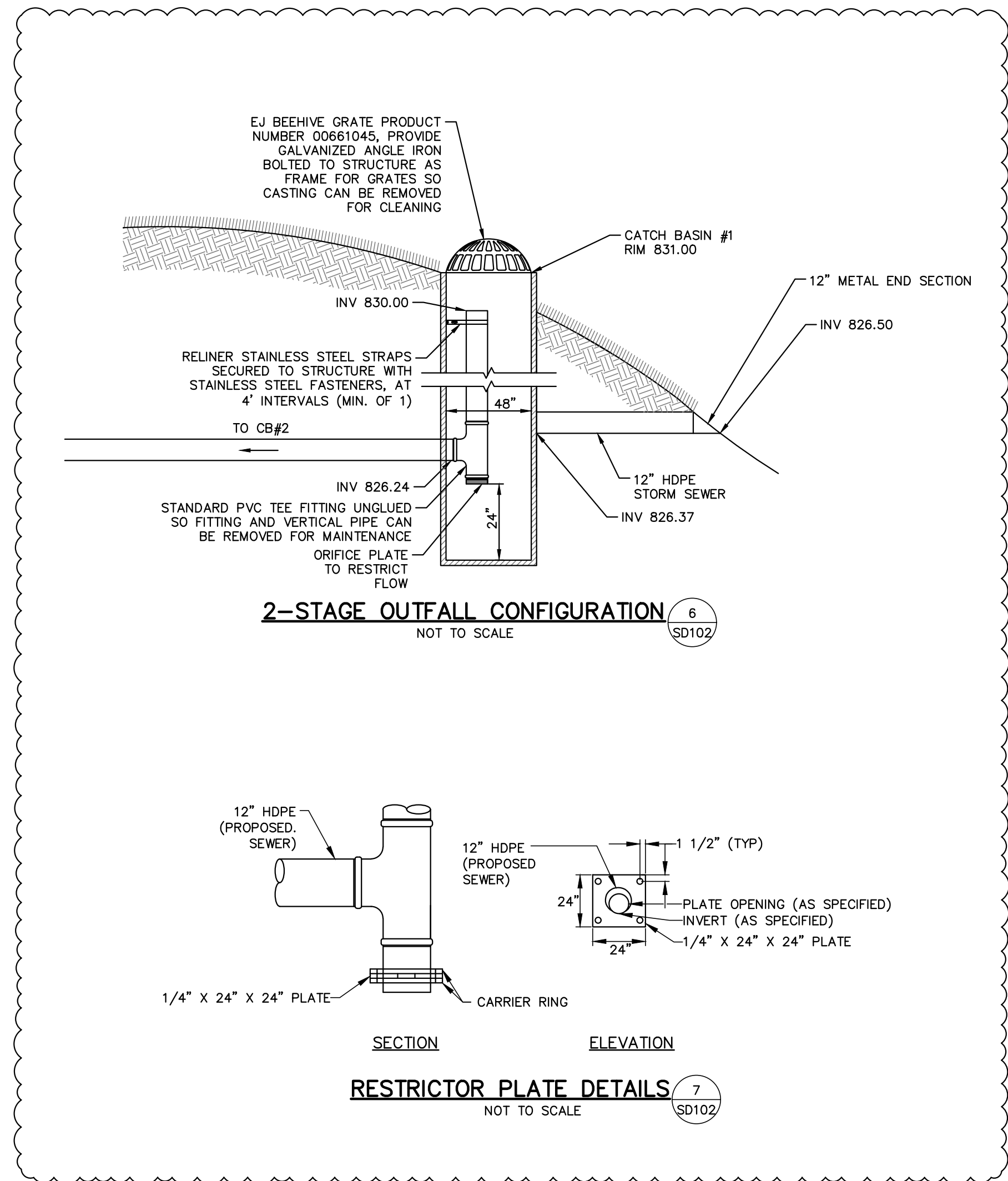
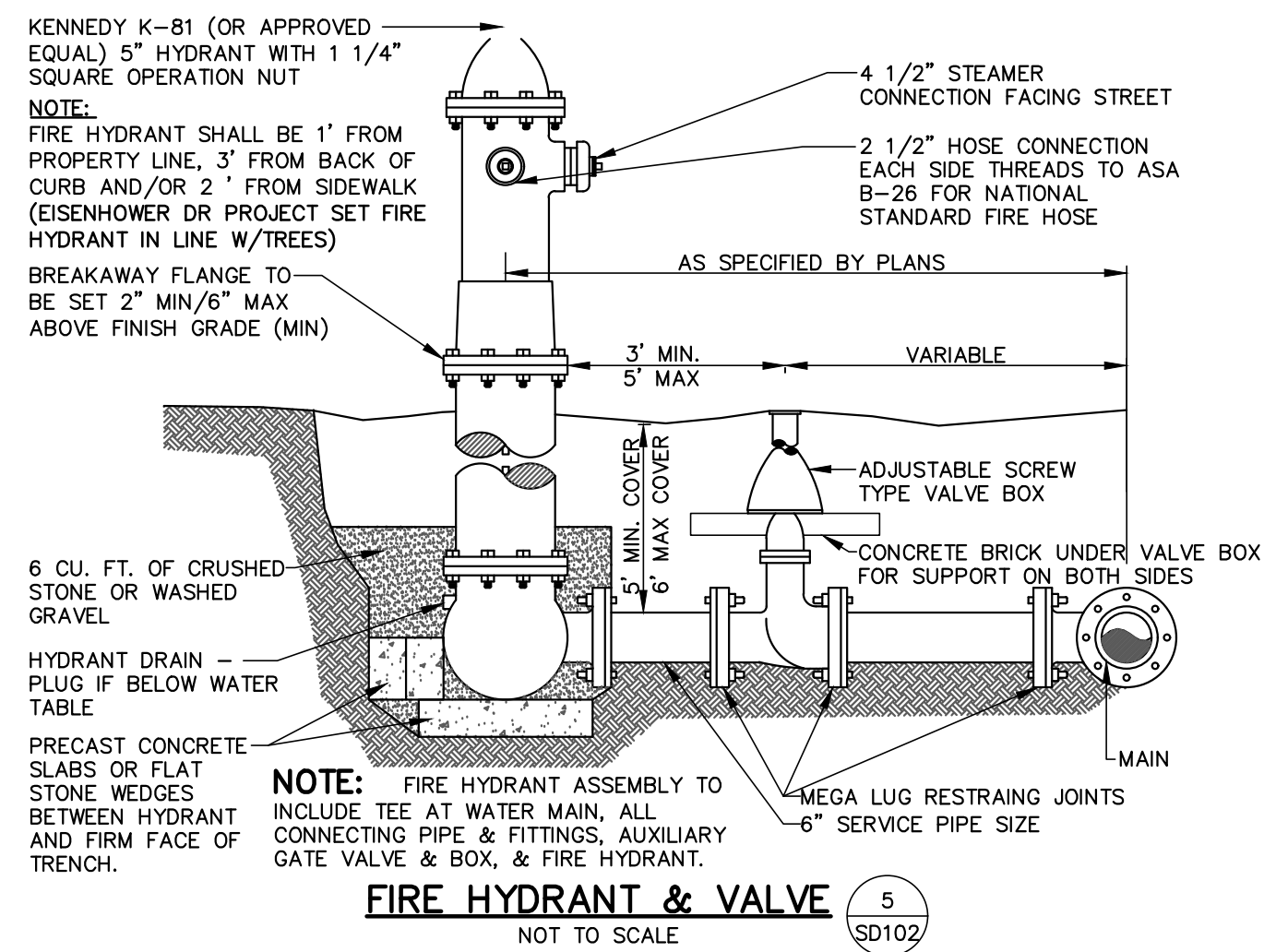
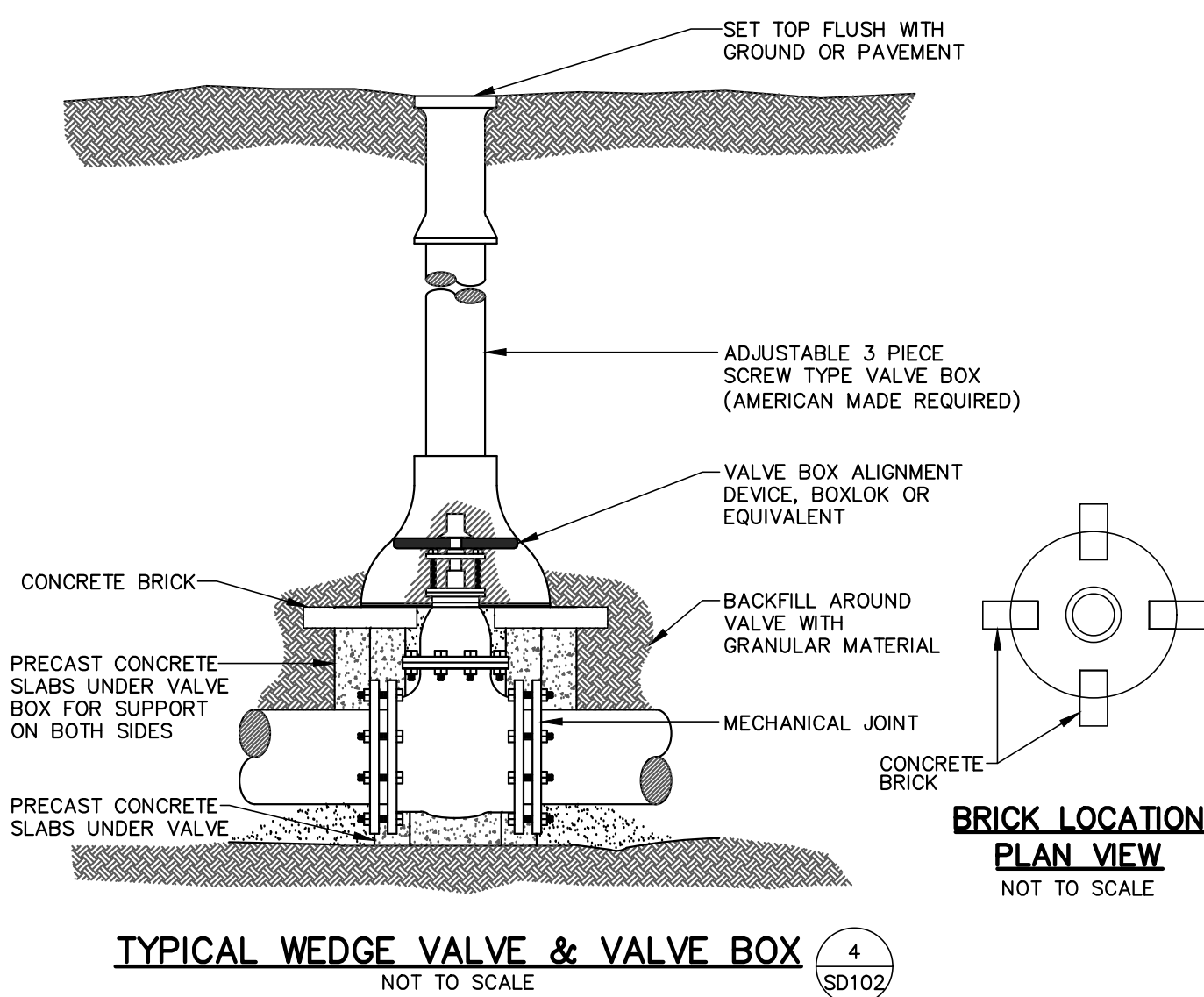
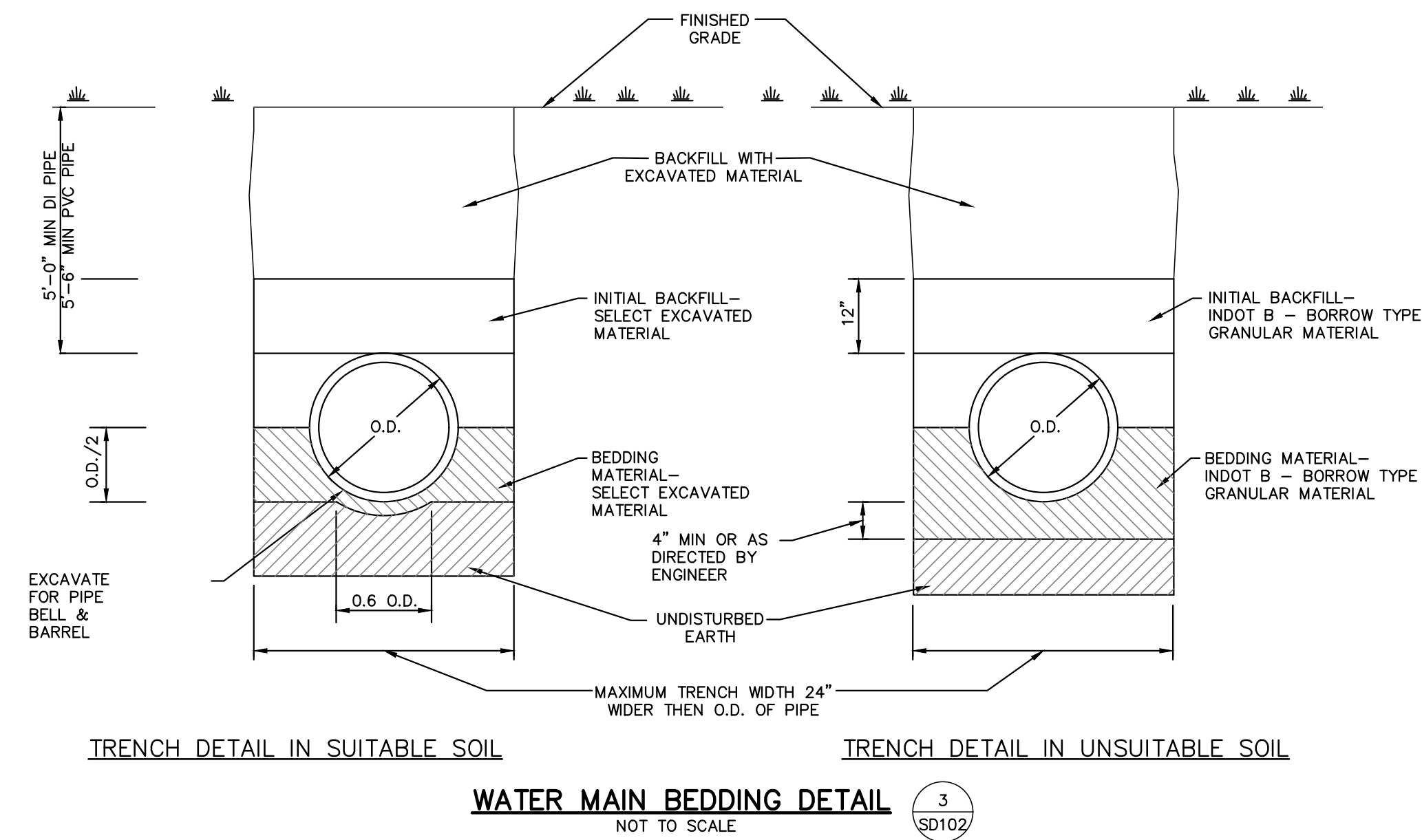
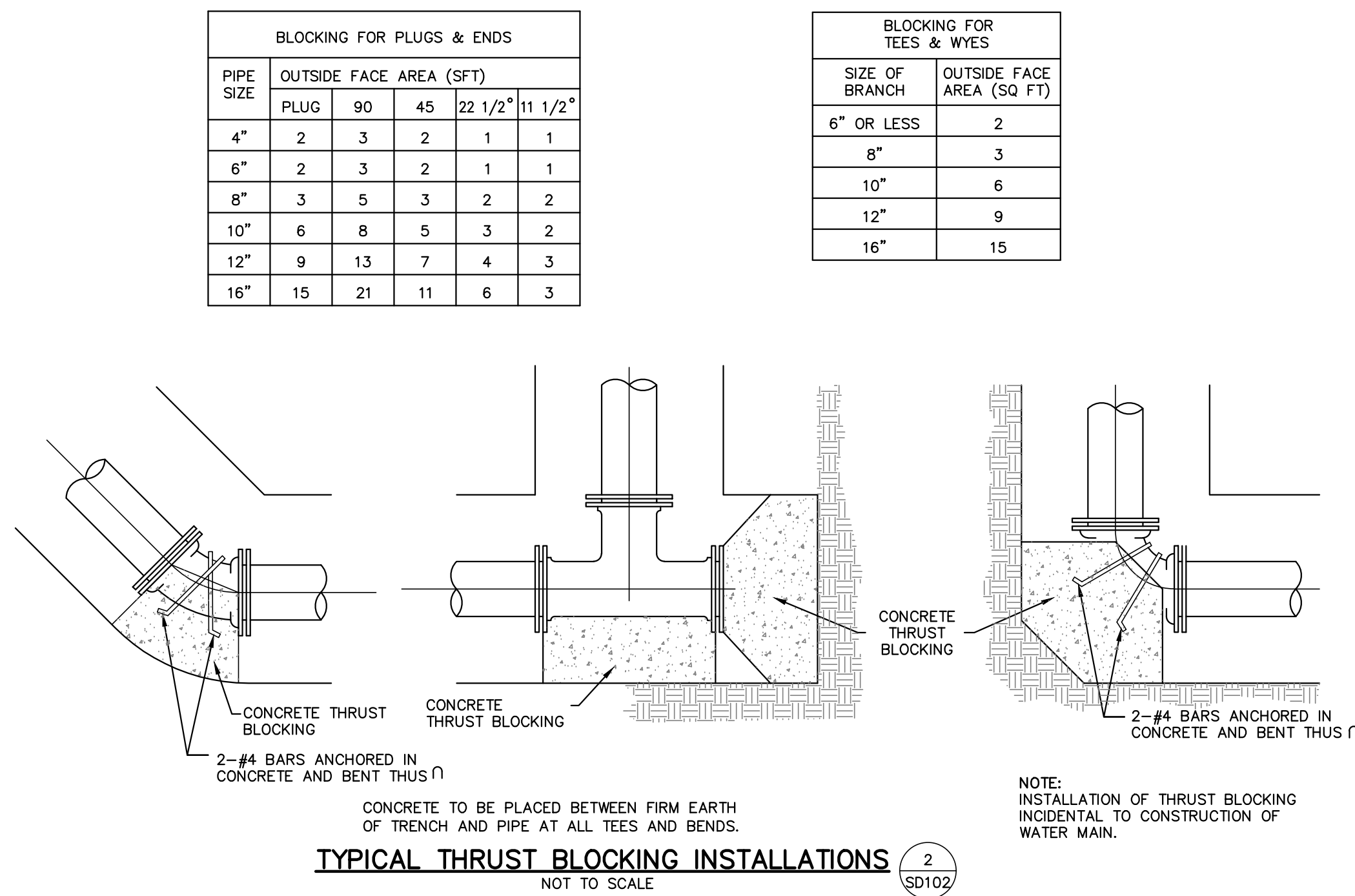
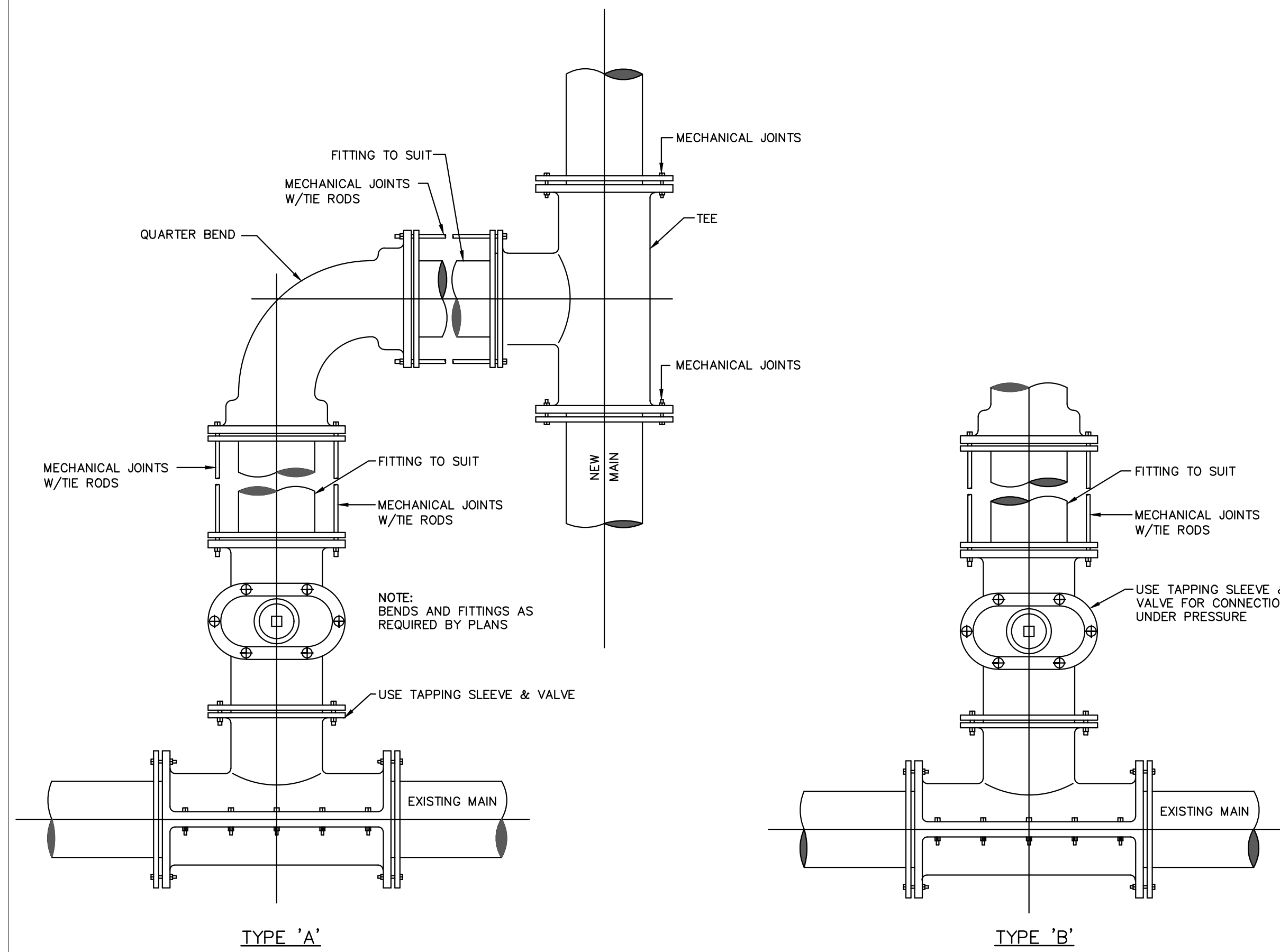
coordinator: NGD

drawn: JJB / RRM

checked: NGD

C402





A PROJECT FOR:



NEW MUNICIPAL MAINTENANCE BUILDING

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mark	date	description
1	02/08/24	PER ADDENDUM 1

**DETAILS-WATER MAIN & MISC.**

date: 1/30/2024  
project: 2021-0136  
coordinator: NGD  
drawn: JJB / RRM  
checked: NGD

SD102