

# WHITE RIVER TOWNSHIP FIRE STATION #52 REMODEL

398 MERIDIAN PARKE LANE  
GREENWOOD, INDIANA

## Addendum No. 02

PROJECT MANAGER & OWNER'S TECHNICAL REPRESENTATIVE



**Envoy, Inc.**

116<sup>th</sup> Street, Suite 250  
Indianapolis, Indiana 46038  
Phone: 317.594.4600  
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ARCHITECT / ENGINEER



**Forge Architecture**

5325 E. 82<sup>nd</sup> St. Suite 242  
Indianapolis, Indiana 46250  
Phone: 502.432.9951

February 19, 2024

**Project:** White River Township Fire Station #52 Remodel

**Date:** February 19, 2024

**By:** Envoy, Inc.

## **ADDENDUM**

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**Number: 02**

This addendum is based in accordance with the provisions of "The General Conditions of the Contract for Construction," Article 1, "Contract Documents" and becomes a part of the Contract Documents as provided therein. Bids will be received at the White River Township Fire Station #52 located at 398 Meridian Parke Lane, Greenwood, IN 46142 at **2:00 p.m.** (local time) on **Tuesday, February 27, 2024.**

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**Included with this Addendum are the following Notes and Clarifications:**

- 1. Insert the attached AIA Document A101-2017 to Project Manual Section 00 52 13.**
- 2. Insert the attached AIA Document A201-2017 to Project Manual Section 00 72 00.**
- 3. Revise all mentions of AIA Document A132-2019 throughout the bid documents. Revise to reference AIA Document A101-2017 instead.**
- 4. Revise all mentions of AIA Document A232-2019 throughout the bid documents. Revise to reference AIA Document A201-2017 instead.**
- 5. Project Manual Section 00 22 13: Insert "7.1.2.1.3 Pursuant to Ind. Code § 36-1-12-4, the Surety further agrees that any defect in the Construction Documents or in the proceedings preliminary to the letter and awarding of the Contract shall not discharge the Surety." to both the AIA Document A701-2018 and Supplementary Instructions to Bidders.**
- 6. Inserts missing page: 00 22 13-1 Supplementary Instructions to Bidders. Attached.**
- 7. Revise the second sentence of Section 005400 ESCROW AGREEMENT 1.2.6 to read "Retainage, in an amount as identified in § 5.1.7 of AIA Document A101-2017, for all such contracts will be held in the Escrow Fund."**
- 8. Note that Envoy, Inc. is listed as Project Manager and Owner's Technical Representative throughout the bid documents. Both definitions reference Envoy's role on this Project.**
- 9. Bids are due at time and date listed above.**
- 10. Scope questions and RFI can still be submitted until Friday, February 23, 2024. Final Addendum will be issued after that if necessary.**



# AIA® Document A101® – 2017

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

**AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_ in the year 2024  
(In words, indicate day, month and year.)

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

White River Township Fire Protection District  
366 North Morgantown Road  
Greenwood, IN 46142  
Attn: Jeremy Pell, Chief  
Email: jpell@wrtfd.org  
Phone: (317) 223-8339

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

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

Remodeling of Station 52 operated by the Owner and located at 398 Meridian Parke Lane,  
Greenwood, IN 46142 in accordance with construction documents provided.

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

Forge Architecture, LLC  
J. Nicholas Wiggins, R.A.  
5325 E. 82<sup>nd</sup> Street, Suite 242  
Indianapolis, IN 46250  
Email: Nick@forge-architecture.com

Project Manager:

Justin Nicol, MBA  
Envoy, Inc.  
8890 W. 116<sup>th</sup> Street, Suite 250  
Fishers, IN 46038  
Email: justin.nicol@envoycompanies.com

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

(1984063556)

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### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9. The Contractor represents and agrees that it has carefully examined and understands this Agreement and the other Contract Documents, has investigated the nature, locality, and site of the Work and the conditions and difficulties under which it is to be performed, and that it enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner, the Architect, the Project Manager or any of their respective officers, agents, servants, or employees.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable therefrom as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Except as expressly provided for in the Contract Documents to the contrary, the Contractor at its sole cost, risk, and expense shall construct, equip, provide, purchase, pay for, and furnish all of the Work in accordance with the Contract Documents and governmental codes and regulations as they apply to performance of the Work.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work ("Date of Commencement") shall be:  
(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner to the Contractor in writing.
- ☐ Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)

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

§ 3.2 The Contract Time shall be measured from the Date of Commencement of the Work.

### § 3.3 Substantial Completion

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

*(Check one of the following boxes and complete the necessary information.)*

☒ [ X ] Not later than ( ) calendar days from the Date of Commencement of the Work.

☐ [ ] By the following date:

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

Portion of Work	Substantial Completion Date
None	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

§ 3.4 The Contractor shall begin the Work on the Date of Commencement and shall perform the Work diligently, expeditiously, and with adequate resources so as to complete all the Work within the Contract Time and in accordance with the Owner-approved schedule. The Contractor shall reschedule or re-sequence the Work, to the extent possible, to avoid or minimize any delay in the Contract Time. The Contractor shall not, without the Owner's prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner or other contractors moves onto the critical path or otherwise becomes critical to the Contract Time or the Contract Time of other contractors. Neither the Owner, its representatives, nor its agents shall be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against them, or any of them, on account of, any damages, costs, or expenses of any nature whatsoever that the Contractor, its Subcontractors, or Sub-subcontractors or any other person may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from or out of any act or omission of the Owner, its representatives, contractors or agents, it being understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time but only in accordance with the provisions of the Contract Documents.

§ 3.5 All times stated in the Contract Documents, including, without limitation, those for the commencement, prosecution, interim milestones, and completion of the Work, and for the delivery and installation of materials and equipment, are of the essence in this Agreement.

## ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$ ), subject to additions and deductions as provided in the Contract Documents.

### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
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§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

*(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

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Item

Price

Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:  
(Identify each allowance.)

Item

Price

§ 4.4 Unit prices are set forth in the "Schedule of Unit Prices" attached hereto and made a part hereof as Schedule 4.4. Such unit prices are considered complete and include (i) all materials, equipment, labor, delivery, installation, overhead, and profit and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which such unit prices apply.

(Table deleted)

§ 4.5 Liquidated damages, if any:  
(Insert terms and conditions for liquidated damages, if any.)

None

§ 4.6 Other:  
(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

None

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Project Manager by the Contractor along with all required supporting documents and Certificates for Payment issued by the Project Manager, and provided the Owner has received all required certifications of the Architect and Project Manager, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 Provided that a complete Application for Payment is received by the Project Manager not later than the seventh (7<sup>th</sup>) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Project Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than the next monthly payment date.

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

§ 5.1.4 Prior to any payment being made, the Contractor shall submit for approval a schedule of values with respective quantities as required by the Contract Documents. The schedule of values shall allocate the Contract amount among the various portion of the Contractor's Work, and shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Each Application for Payment shall be based on the most recent Owner approved schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Project Manager or Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment and shall be accompanied by all supporting documents required by the Contract Documents or reasonably required by Owner or Project Manager, all in form and substance satisfactory to Owner. In addition to other required items, each Application for Payment shall be accompanied by the following, all

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in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State of Indiana.

(i) A current Sworn Statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be paid to the Contractor from such progress payment, together with a current, duly executed waiver of mechanics' and material suppliers' liens from the Contractor establishing receipt of payment or satisfaction of the payment requested by the Contractor in the current Application for Payment.

(ii) Commencing with the second Application for Payment submitted by the Contractor, duly executed so-called "after-the-fact" or "trailing" waivers of mechanics' and material suppliers' liens from all Subcontractors, material suppliers, and, where appropriate, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed prior to submittal by the Contractor of the current Application for Payment, plus sworn statements from all Subcontractors, material suppliers and, where appropriate, lower tier subcontractors, covering all amounts described in this clause (ii) of Section 5.1.5.

(iii) Such other information, documentation, and materials as the Owner or the Project Manager may require.

**§ 5.1.6** In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction (as modified, the "General Conditions"), and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction in accordance with the Contract Documents, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect or Project Manager determines, in their professional judgment, to be reasonably justified.

**§ 5.1.6.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Project Manager has previously withheld a Certificate for Payment as provided in Article 9 of the General Conditions;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or Project Manager may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions; and
- .5 Retainage withheld pursuant to Section 5.1.7.

#### **§ 5.1.7 Retainage**

**§ 5.1.7.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

As provided for in the General Conditions, five percent (5%) of all progress payments shall be held as retainage until final payment in accordance with the Contract Documents.

**§ 5.1.7.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

None

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

*(Paragraph deleted)*

Except as otherwise provided in the Contract Documents, the Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Contractor or (ii) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of the General Conditions.

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

**§ 5.1.10** No progress payments made under this Agreement shall be conclusive evidence of the performance of this Agreement either in whole or in part, and no such payment shall be construed to be acceptance of defective Work or improper materials.

## **§ 5.2 Final Payment**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect or Project Manager;
- .3 the Contractor has submitted all materials required by Section 9.10 of the General Conditions and met all other requirements of the Contract Documents.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than 60 days after the issuance of the Architect's or Project Manager's final Certificate for Payment.

## **§ 5.3 Interest**

Payments due and unpaid under the Contract, excluding amounts disputed in good faith by Owner, shall bear interest from the date which is thirty-five (35) days following the date payment is due at the rate stated below.

*(Insert rate of interest agreed upon, if any.)*

One percent % 1 per month in accordance with Ind. Code § 5-17-5-1.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Project Manager will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(Paragraphs deleted)*

All claims or disputes shall be resolved in accordance with Article 15 of the General Conditions.

*(Paragraphs deleted)*

## **ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

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§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the Contractor a termination fee in accordance with the General Conditions. *(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative and Program Manager:  
*(Name, address, email address, and other information)*

Justin Nicol, MBA  
Envoy, Inc.  
8890 W. 116<sup>th</sup> Street, Suite 250  
Fishers, IN 46038  
Email: [justin.nicol@envoycompanies.com](mailto:justin.nicol@envoycompanies.com)

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

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

#### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds attached hereto, and as required elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A attached hereto, and as required elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of the General Conditions, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

#### § 8.7 Other provisions:

§ 8.7.1 The Contractor shall comply with all state, federal, and municipal laws, regulations, and standards of due care or diligence applicable to its activities pursuant to this Agreement including, but not limited to, the non-discrimination requirements imposed by Indiana Code Section 22-9-1-10, Indiana Code Section 36-1-12-15 and Indiana Code Section 5-16-6-1.

Init.

**§8.7.2** This Agreement and the Contract Documents shall be interpreted according to and governed by the laws of the State of Indiana and any litigation to which the Owner, the Project Manager, the Architect or the Contractor may be a party shall be brought exclusively in the State Courts of Johnson County, Indiana, and the parties hereto waive any objections to such jurisdiction or venue.

**§8.7.3** Notwithstanding any other provision of the Contract Documents, Contractor agrees and warrants to the Owner that, pursuant to Indiana law, public policy and public necessity prohibit the filing of a mechanic's lien for work performed on a public project, including the Project. Consequently, Contractor agrees and warrants that no claim or lien shall attach to or be filed on the Project or on any other property owned by Owner, by the Contractor, or by virtue of Contractor's default in paying any employee, Subcontractor or supplier. Should such claim or lien be filed, payment otherwise due the Contractor will not be due until Contractor delivers to Owner a complete release of such claim or lien, or, at Owner's option, a bond satisfactory to Owner indemnifying Owner against such claim or lien. All references to mechanic's liens in the Contract Documents, or the requirement for releases thereof, are for Owner's protection only, and shall not raise the inference that any liens may be filed relating to the Project by any party. Contractor covenants and agrees that it will include this provision in its agreement with Subcontractors and suppliers of material to the Project.

**§8.7.4** If at any time there shall be evidence of a lien or claim for which, if established, the Owner might become liable, and that is chargeable to the Contractor, or if the Contractor shall incur any liability to the Owner, or the Owner shall have any claim or demand against the Contractor of any kind or for any reason, whether or not reduced to judgment or award, the Owner shall have the right to retain out of any payment due or to become due under this Agreement or any other agreement between the Owner and the Contractor, an amount sufficient to indemnify the Owner against such lien or claim, or to fully satisfy such liability, claim, or demand. The Owner shall also be entitled to charge against or deduct from any such payment all costs of defense or collection with respect thereto, including all of Owner's reasonable attorneys' fees. Should any claim or lien develop after all payments are made hereunder, the Contractor shall refund to the Owner within ten (10) days of demand therefore all monies that Owner may be compelled to pay in discharging such claims or liens and all costs, including reasonable attorneys' fees, incurred in collecting said monies from the Contractor.

## **§ 8.8 Compliance with Indiana Labor Laws**

### **§ 8.8.1 Antidiscrimination.**

In accordance with Ind. Code §5-16-6-1 the Contractor and each Subcontractor of any tier, or anyone acting on their behalf, shall not discriminate against or intimidate any citizen of the State of Indiana who is qualified and available to perform Work hereunder on the basis of race, religion, color, sex, disability, national origin, ancestry or veteran status. A violation of this provision shall result in a deduction of \$5.00 per person for each calendar day of such violation. In the event of a second violation of this provision the applicable contract or subcontract may be cancelled or terminated and all amounts due or to become due thereunder may be forfeited. Pursuant to Ind. Code § 22-9-1-10, a breach of this covenant may be regarded as a material breach of this Agreement.

### **§ 8.8.2 E-Verify.**

The Contractor and each Subcontractor of any tier shall submit to the Contractor, the E-Verify Case Verification Number for each individual who is required to be verified under Ind. Code § 22-5-1.7 prior to that individual beginning work on the Project. An individual who is required to be verified under Ind. Code § 22-5-1.7 whose final case result is "final non-confirmation" may not be employed on the Project. Contractor and Subcontractors of every tier must enroll in and verify the work eligibility status of all newly hired employees of the Contractor or the Subcontractor through the E-Verify program as long as the E-Verify program is in existence.

### **§ 8.8.3 No Cash Payment.**

The Contractor and each Subcontractor of any tier may not pay cash to any individual employed for work done by any individual on the Project.

### **§ 8.8.4 Minimum Insurance.**

The Contractor and each Subcontractor of any tier must maintain general liability insurance with limits of no less than \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate. This provision shall not alter any requirement of the Contract Documents for greater insurance coverage.

**§ 8.8.5 Wage Laws.**

The Contractor and each Subcontractor of any tier must remain in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209), Ind. Code § 22-2-2-1 through Ind. Code § 22-2-2-8 (Minimum Wage requirements). A Contractor and Subcontractor of any tier must be in compliance with Ind. Code § 22-3-5-1 and Ind. Code § 22-3-7-34 (Workers Compensation Insurance requirements) and Ind. Code § 22-4-1 through Ind. Code § 22-4-39.5 (Unemployment Compensation requirements).

**§ 8.8.6 Drug Testing.**

For contracts of \$150,000 or more, the Contractor and a Subcontractor of any tier must be in compliance with Ind. Code § 4-13-18-1 through Ind. Code § 4-13-18-7 (Drug Testing of Employees on Public Works Contracts). Bid responses must include a written plan for employee drug testing with their bid response or if subject to collective bargaining agreement, a copy of the relevant part of the agreement regarding drug testing.

**§ 8.8.7 Training Program.**

The Contractor and each Subcontractor of any tier that employs ten (10) or more employees must provide access to a training program applicable to the tasks to be performed in the normal course of the employee's employment through:

- .1 an apprenticeship program;
- .2 a program offered by Ivy Tech Community College or Vincennes University;
- .3 a program established by or for the Contractor;
- .4 a program offered by an entity sponsored by the United States Department of Labor, Bureau of Apprenticeship and Training;
- .5 a program that results in the award of an industry recognized portable certification;
- .6 a program approved by the United States Department of Transportation; or
- .7 a program approved by the Indiana Department of Transportation.

**§ 8.8.8 Apprenticeships and Training.**

The Contractor and each Subcontractor of any tier that employs fifty (50) or more journeymen must participate in an apprenticeship or training program that meets the standards established by or has been approved by any of the following:

- .1 United States Department of Labor;
- .2 Bureau of Apprenticeship and Training;
- .3 the Indiana Department of Labor;
- .4 the United States Department of Transportation Federal Highway Administration; or
- .5 the Indiana Department of Transportation.

**§ 8.8.9 State Qualification.**

For contracts of \$300,000 or more, the Contractor and Subcontractors of any tier must be qualified under either of the following before performing any work on the Project: Ind. Code § 4-13.6-4 or Ind. Code § 8-23-10 (State Public Works Projects Qualification).

**§ 8.8.10 Payroll Records.**

The Contractor and Subcontractors of any tier must preserve payroll and related records for a period of three (3) years after final completion of the Project and leave such records open to inspection by the Department of Workforce Development.

**§ 8.8.11 Affidavit.**

A Contractor's Acknowledgement is included as Exhibit "B" and must be obtained by the Contractor and submitted to Owner by Contractor and every Subcontractor of any tier on the Project upon award of contract. The Contractor's Acknowledgement shall become part of the Contract Documents. If applicable, copies of certification under Ind. Code §4-13-6-4 et seq. and evidence of an employee drug testing program as required by Ind. Code §4-13-18 et seq. must be attached to the acknowledgement.

**§ 8.8.12 Compliance.**

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Contractors and Subcontractors failing to comply with the provisions of this Section 8.8 may be determined to be not responsible for future bidding requirements for a period of up to forty-eight (48) months and may be subject to additional requirements and penalties as provided in applicable law.

**§ 8.8.13 Steel Products.**

In accordance with Ind. Code 5-16-8, if steel or foundry products are to be utilized or supplied in the performance of the Work, only steel products produced in the United States shall be used. Reference is hereby made to such statute for definitions applicable to this Section. Owner may not authorize or make any payment to Contractor unless Owner is satisfied that Contractor has fully complied with this provision and may require an affidavit evidencing the same prior to any payment to Contractor.

**§ 8.9 Material Testing.**

Notwithstanding the provisions of Section 13.4 of the General Conditions, the Owner shall have the responsibility for all initial material testing required for the Project. Contractor shall cooperate with all material testing in accordance with Section 13.4, and shall be responsible for any required repeated material and other testing in accordance with Section 13.4.3 of the General Conditions.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction (as modified)
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

**.5 Drawings**

Number	Title	Date
As set forth in the specifications for Bid Package #1		

**.6 Specifications**

Section	Title	Date	Pages
As set forth in the specifications for Bid Package #1			

**.7 Addenda, if any:**

Number	Date	Pages
As set forth in the specifications for Bid Package #1		

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

**.8 Other Exhibits:**

(Paragraphs deleted)

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

**.9 Other documents, if any, listed below:**

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*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

**WHITE RIVER TOWNSHIP FIRE  
PROTECTION DISTRICT, INDIANA**

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

\_\_\_\_\_  
**Jeremy Pell, Chief**

*(Printed name and title)*

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

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

Init.

SCHEDULE 4.4

Unit Prices

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

Init.  
/

## EXHIBIT "B"

### CONTRACTOR'S ACKNOWLEDGMENT

The undersigned Contractor certifies under the penalties of perjury, and in accordance with Ind. Code §5-16-13 *et seq.* and Ind. Code §22-5-1.7-11.1 *et seq.* as follows:

1. The Contractor has enrolled in and will verify the work eligibility status of all newly hired employees through the E-Verify program so long as the E-Verify program is in existence.

2. The Contractor does not and shall not knowingly employ an unauthorized alien.

3. The Contractor shall receive a certification from each subcontractor of any tier on the project that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled and is participating in the E-Verify program.

4. If the Contractor's contract is for \$150,000 or more, Contractor has established an employee drug testing program in compliance with I.C. §4-13-18 *et seq.* and has attached hereto the written plan for the program or a copy of the relevant part of the collective bargaining agreement providing for such program.

5. If the Contractor's contract is for \$300,000 or more, I have attached a current certificate of qualification issued by the State of Indiana under I.C. §4-13.6-4 or I.C. §8-23-10.

6. If Contractor employs ten (10) or more employees Contractor provides access to a training program applicable to the tasks to be performed in the normal course of the employee's employment with the Contractor through:

- a. an apprenticeship program;
- b. a program offered by Ivy Tech Community College or Vincennes University;
- c. a program established by or for Contractor;
- d. a program offered by an entity sponsored by the United States Department of Labor, Bureau of Apprenticeship and Training;
- e. a program that results in the award of an industry recognized portable certification;
- f. a program approved by the United States Department of Transportation; or
- g. a program approved by the Indiana Department of Transportation.

7. If Contractor employs fifty (50) or more journeymen, Contractor participates in an apprenticeship or training program that meets the standards established by or has been approved by any of the following:

- a. United States Department of Labor;
- b. Bureau of Apprenticeship and Training;
- c. the Indiana Department of Labor;
- d. the United States Department of Transportation Federal Highway Administration; or
- e. the Indiana Department of Transportation.

On behalf of Contractor, I hereby acknowledge and certify under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

**CONTRACTOR**

Date: \_\_\_\_\_

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

Printed Name and Title

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# **AIA® Document A101® – 2017 Exhibit A**

## **Insurance and Bonds**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the \_\_\_\_ day of \_\_\_\_\_ in the year 2024  
(In words, indicate day, month and year.)

for the following **PROJECT**:  
(Name and location or address)

Remodeling of Station 52 operated by the Owner and located at 398 Meridian Parke Lane, Greenwood, IN 46142 in accordance with construction documents provided.

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

White River Township Fire Protection District  
366 North Morgantown Road  
Greenwood, IN 46142  
Attn: Jeremy Pell, Chief  
Email: jpell@wrtfd.org  
Phone: (317) 223-8339

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

### **TABLE OF ARTICLES**

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

#### **ARTICLE A.1 GENERAL**

The Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Article 11 of AIA Document A201-2017, as modified by Owner. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction as modified.

#### **ARTICLE A.2 OWNER'S INSURANCE**

(Paragraphs deleted)

##### **§ A.2.1 Liability Insurance**

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

##### **§ A.2.2 Required Property Insurance**

**§ A.2.2.1** Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance

#### **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.

This document is intended to be used in conjunction with AIA Document A201®-2017, General Conditions of the Contract for Construction. Article 11 of A201®-2017 contains additional insurance provisions.

companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ A.2.2.1.1 Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm.

**§ A.2.2.1.2** Upon Substantial Completion, Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ A.2.2.1.3 Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ A.2.2.2 Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

## **ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS**

### **§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner and the Indemnites listed in Section 3.18.4 of the General Conditions as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies. Each certificate shall provide the Owner with thirty (30) days' notice prior to any proposed cancellation or material change in coverage.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Program Manager, the Architect, and their respective consultants, along with their respective officers, employees and agents as additional insureds (collectively "Additional Insureds") for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Additional Insureds as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Additional Insureds' general liability insurance policies and shall apply to both ongoing and completed operations. To the extent

commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

#### **§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

#### **§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000 ) each occurrence, Two Million Dollars (\$ 2,000,000 ) general aggregate, and Two Million Dollars (\$ 2,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

**§ A.3.2.2.2** The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ A.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ A.3.2.4** The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required

under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Hundred Thousand Dollars (\$ 100,000 ) each accident, One Hundred Thousand Dollars (\$ 100,000 ) each employee, and Five Hundred Thousand Dollars (\$ 500,000 ) policy limit.

§ A.3.2.7 The Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000 ) per claim and Two Million Dollars (\$ 2,000,000 ) in the aggregate.

§ A.3.2.8 The Commercial General Liability Policy under this Section A.3.2.2 shall include all major Divisions of Coverage and be on a comprehensive basis including:

- .1 Premises Operations (including X-C-U).
- .2 Contractual obligations including specific provisions for the Contractor's obligations under Section 3.18 of the General Conditions.
- .3 Owned, non-owned, hired motor vehicle.
- .4 Workman's Compensation is to include Voluntary Worker's Compensation Coverage.
- .5 Deductible amount for Excess Liability Coverage is not to exceed \$10,000.00.
- .6 Broad Form Property Damage, including Completed Operations.

*(Paragraphs deleted)*

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

*(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- [ ] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible to the fault of the Contractor. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- [ ] **§ A.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- [ ] **§ A.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [ ] **§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.**
- [ ] **§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.**
- [ X ] **§ A.3.3.2.6 Other Insurance**  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
Umbrella/Excess Liability (May be waived by Owner)	Each occurrence \$4,000,000 Retention \$25,000 or less Annual Aggregate \$4,000,000

#### **§ A.3.4 Performance Bond and Payment Bond**

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum plus value of subsequent Modifications
Performance Bond	Contract Sum plus value of subsequent Modifications

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement. The Payment Bond and Performance Bond shall meet all statutory requirements of the State of Indiana, and shall be in form and substance satisfactory to the Owner, and without limitation, complying with the following specific requirements:

- 1 Bonds shall be executed by a responsible surety licensed in the State of Indiana, with a Best's rating of no less than A- and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any terms of incomplete Work and the payment of any disputed amounts, whichever time period is longer. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the surety to affix thereto a certified and current copy of his Power of Attorney indicating the monetary limit of such power.
- 2 Every Bond must display the Surety's bond number.

All Bonds must carry the following rider provisions:

- 1 The surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change or other modifications of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other or any other party, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
- 2 The Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or the Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner within thirty (30) days thereof, and the Owner shall have thirty (30) days from the time after receipt of such

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notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such notice of default shall be sent by certified or registered U.S. Mail, return-receipt requested, postage pre-paid, to the Owner.

- .3 The Surety agrees it is obligated under the Bonds to any successor, grantee, or assignee of the Owner including the Carmel Clay Historical Society, Inc. as Co-Obligee.
- .4 Pursuant to Ind. Code § 36-1-12-4, the Surety further agrees that any defect in the Construction Documents or in the proceedings preliminary to the letting and awarding of the Contract shall not discharge the Surety.

#### **ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

**§ A.4.1** Contractor shall require that all Subcontractors of every tier to provide Certificates of Insurance evidencing liability insurance that complies with the requirements of this Exhibit "A" with limits according to a schedule of Subcontractor's liability insurance to be submitted by Contractor and approved by Owner.

**§ A.4.2** When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall furnish to the Owner Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. All original, renewal and replacement policies shall be in form and substance satisfactory to the Owner or Contractor and written by carriers acceptable to the Owner or Contractor.



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Remodeling of Station 52 operated by the Owner and located at 398 Meridian Parke Lane, Greenwood, IN 46142 in accordance with construction documents provided.

### THE OWNER:

*(Name, legal status and address)*

White River Township Fire Protection District  
366 North Morgantown Road  
Greenwood, IN 46142  
Attn: Jeremy Pell, Chief  
Email: jpell@wrtfd.org  
Phone: (317) 223-8339

### THE ARCHITECT:

*(Name, legal status and address)*

Forge Architecture, LLC  
J. Nicholas Wiggins, R.A.  
5325 E. 82<sup>nd</sup> Street, Suite 242  
Indianapolis, IN 46250  
Email: Nick@forge-architecture.com

### THE PROJECT MANAGER:

Justin Nicol, MBA  
Envoy, Inc.  
8890 W. 116<sup>th</sup> Street, Suite 250  
Fishers, IN 46038  
Email: justin.nicol@envoycompanies.com

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### 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.

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(3B9ADA35)

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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, the Invitation to Bid, the Instructions to Bidders, the Owner approved schedule and the Project Manual as issued. 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.

#### **§ 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 except as set forth in Section 5.3 and 5.4, (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. The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and include Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and professional standards.

#### **§ 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 with Owner. 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, Architect or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

#### **§ 1.1.9 Miscellaneous Definitions**

- .1 The term "product" as used herein includes materials, systems and equipment.
- .2 The term "supplier" as used herein, includes a firm or organization furnishing or delivering products

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directly to the jobsite and because of such direct delivery, could be construed under the lien laws of the State of Indiana as having lien rights against the Project. Suppliers of material and equipment, delivering Contractor or Subcontractor on an open account basis and not having lien rights on the Work, will not be considered suppliers within the meaning of the Contract Documents.

- .3 Where "request," "approval," "satisfactory" and similar words appear, it is the request, approval or satisfaction of the Owner that is intended unless specifically stated otherwise.
- .4 The term "provide," including derivatives, shall mean to fabricate properly, complete transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place ready for operations or use under the terms of the Specifications.
- .5 Where "complete" is used, it shall mean "complete with connections, supports, attachments and incidental items necessary for a finished and properly operating assembly or installation."
- .6 Where "Drawing" is used, it shall mean plans and detail drawings, both large and small scale, furnished by the Owner or Architect for the purpose of giving instructions and showing the Work to be done.
- .7 Where "Bid Category," "Bid Area," "Bid Package," "Areas of Work," "Classification of Work," "Subcontract," and similar terms are used, they shall refer to Work that will be included in a particular bidder contract or subcontract.
- .8 "Inclement weather" shall be defined as rain, snow, sleet, hail or other forms of precipitation that prohibits/halts the ability of the Contractor to make meaningful progress. Inclement weather is only the condition of the atmosphere. Mud, standing water, snow, ice and similar conditions are not considered "inclement weather".
- .9 The term "connect" shall be defined as to bring service(s) to the point of installation and make final connections of the service(s) to the installed equipment, and provide all miscellaneous auxiliary appurtenances necessary to make operable for its intended use.
- .10 The term "furnish" shall be defined as to supply (only) to another party for their use or installation, including cost of delivery and unloading at the jobsite.
- .11 The term "install" shall be defined as to distribute, uncrate, assemble, and fix into the intended final positions, the installer to provide all miscellaneous hardware and supplies required to anchor and support securely, clean up, and dispose of rubbish.
- .12 The terms "approved equal" and "equal to" shall mean products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution and proves to be equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect and Owner.
- .13 The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor or a Subcontractor, shall mean any combination of acts and omissions that causes the Owner, the Architect or Contractor to reasonably conclude that the Contractor or Subcontractor will not complete the Work within the Contract Time for the Contract Sum, or in substantial compliance with the requirements of the Contract Documents.
- .14 The terms "knowledge", "recognize" and "discover" and their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill and diligence required of the Contractor by the Contract Documents.
- .15 When the terms "approved," "satisfactory," "proper," or "as directed" are used, approval or direction by the Architect shall be understood. In no case will "approval" by the Architect be interpreted as a release of Contractor from its responsibility to fulfill the requirements of the Contract Documents.
- .16 The term "Indemnities" shall be as defined in Section 3.18.1.
- .17 Unless the context clearly dictates otherwise, the term "Project Schedule(s)," "schedule(s)" and "construction schedule(s)" shall mean the then-current Project scheduled prepared by Architect as approved by Owner.

#### § 1.1.10 The Project Manual

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User Notes:

(3B9ADA35)

The Project Manual is the volume or volumes containing the Notice to Bidders, Instructions to Bidders, Bid Form, other sample bidding and contract forms Conditions of the Contract (general, supplemental and other conditions) and the Specifications.

#### **§ 1.1.11 Contractor**

For the purposes of the Contract Documents, the term "Contractor" shall mean the Contractor listed in the AIA Document A101-2017 between Contractor and Owner.

#### **§ 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. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7. If there exists a discrepancy in the assignment of Work between the Project Manual and Drawings, the requirements of the Project Manual shall take precedence.

If the provisions of these General Conditions conflict with the Architect's directions in the Project Manual, the Project Manual shall take precedence. In the event of any dispute over the meaning or application of the Agreement or the Contract Documents, they shall be interpreted fairly and reasonably and neither more strongly for, nor more strongly against, any party, each party having the opportunity to consult legal counsel.

**§ 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. When a duplication of material or equipment occurs in the Drawings or the Specifications by assignment of Work to separate Contractors, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Architect and Owner will decide which Contractor(s) shall furnish the same and which contract amount shall be adjusted, for not incorporating such material or equipment into the Project.

- .1** Drawings cannot indicate every offset, fitting, and accessory required to avoid all conflict with other trades. Contractor and Subcontractors shall check drawings of other trades to verify spaces available and make reasonable modifications, as directed, without extra cost; maintain head room and other space requirements in all areas; and where such requirements appear inadequate, notify the Architect through the Contractor before proceeding.
- .2** On the Drawings, given dimensions shall take precedence over scaled measurements, large-scale drawings over small-scale drawings, and noted materials over graphic indications. In addition, Contractor and Subcontractor shall not scale drawings.
- .3** Before ordering any materials or doing any Work, the Contractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference that may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .4** If a minor change in the Work is found to be necessary due to actual field conditions, the Contractor shall promptly submit detailed drawings of such departure for approval by the Architect before making the change.

- .5 Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard in workmanship and materials throughout corresponding parts of the Work and, where necessary, the Contractor shall adapt such detail for use in corresponding parts of the Work, subject to the Approval of the Architect.**

**§ 1.2.4** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.4. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

**§ 1.2.5** It is the intent of the Contract Documents to accomplish a complete and first class installation executed by competent and experienced workman in which there shall be installed new products of the latest and best design and manufacture.

- .1** Details of preparation, construction, installation and finishing encompassed by the Contract Documents, shall conform to the best practices of the respective trades, and workmanship, construction methods and materials shall be of such quality and so coordinated to accomplish a high quality, neat and workmanlike finished job.
- .2** Where specific recognized standards are mentioned in the Specifications, it shall be interpreted that such requirements shall be complied with.
- .3** Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other association standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.
- .4** Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.2. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.
- .5** Where reference to codes and standards of technical associations and organizations are made in the Contract Documents, the current edition of such codes and standards shall govern unless specific edition dates are included.

### **§ 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** All documents and electronic files, including survey data, trace maps, drawings, drawing files, reports, estimates, field notes, drawings, Specifications and other documentation (written or electronic), relating to the Project completed or partially completed for Owner by Architect pursuant to the Architect's Agreement or by Contractor or Subcontractors pursuant to their Agreement shall remain at all times the property of Owner.

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 this Project is not to be construed as publication in derogation of the Contractor's, Subcontractor's, 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.

#### **§ 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 any means allowed under Section 1.6.1 provided that a confirming copy is delivered by personal service, certified or registered mail, or by courier providing proof of delivery.

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

The Architect may designate protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit (or equivalent) as prepared by Architect and approved by Owner and issued for the Project, 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 the establishment of 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 (or equivalent), and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form (or equivalent), both as prepared by Architect, approved by Owner and Contractor and issued for the Project, 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.

#### **§ 1.8 Confidentiality**

**§1.8.1** The Contractor warrants and represents that the Contractor and its Subcontractors shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications, and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor shall not disclose to others that specific information was received from the Owner even though it falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

**§1.8.2** The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

**§1.8.3** The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.8.

**§1.8.4** The representations and warranties contained in this Section 1.8 shall survive the complete performance of the Work or earlier termination of this Agreement.

**§1.8.5** Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the Owner at its expense, to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title, and interest thereto.

## **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 has designated a Project Manager 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 as designated on the cover page.

**§ 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.

*(Paragraphs Deleted)*

### **§ 2.2**

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

**§ 2.2.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the development of real estate, 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 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 to confirm such information as provided in Section 3.2.2.

**§ 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

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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. The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

**§ 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 persistently or willfully 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. The Owner's right shall be an addition to, and not in limitation of, the Owner's rights under Section 12.2, or the Contract Documents, at law or in equity.

#### **§ 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 seven (7) 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 or Project Manager and the Architect or Project Manager 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 or Project Manager'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, Project Manager 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 or Project Manager in the 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. Prior to execution of the Agreement, the Contractor and each Subcontractor shall have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing a safe

place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

**§ 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 design information contained in the Contract Documents; however, the Contractor shall promptly report to the Project Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Project Manager 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. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect, the Project Manager or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner.

**§ 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 and Project Manager any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Project Manager may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or Project Manager 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, Project Manager or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.2.5** Each Subcontractor shall be responsible for reviewing the entire (complete) set of Construction Documents and shall be responsible for coordinating its work and materials with the work of other contracts. Subcontractor shall be responsible for work assigned to its bid category no matter what Drawing it is shown on or Specification Section it is specified within. Subcontractors shall be responsible for supplying and completing a complete workable Project including all Work normal to its trade or craft whether or not shown or specified.

### **§ 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, safety measures and for coordinating all portions of the Work under the Contract.

**§ 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. Subcontractors shall be responsible to the Contractor for acts and omissions of the Subcontractor's employees, their Sub-subcontractors and their respective agents and employees, and other persons or entities performing portions of the Work for or on behalf of, the Subcontractor.

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

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

#### **§ 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 all 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. If the Contractor or Subcontractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply: The Contractor must submit to the Architect and the Owner, (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Project Manager, the Architect and Owner in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor or Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Architect or Project Manager, a substitution would be substantially in the Owner's best interests, in terms of cost, time, or other considerations. Whether or not any proposed substitution is accepted by the Owner, the Project Manager or the Architect, the Contractor shall reimburse the Owner for any fees charged by the Architect or Project Manager or other consultants for evaluating each proposed substitute.

**§ 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.

**§ 3.4.4** The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

- .1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect, the Project Manager or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the

activities that shall not be included in the work of any particular trade.

- .2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.
- .3 Any employee of the Contractor or its Subcontractors whom the Owner, the Contractor or the Project Manager considers detrimental to the Project or the proper carrying out of the Work shall be removed from the Project promptly upon notification by the Owner, Contractor and/or the Project

Manager.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner, the Project Manager 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 shall 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 or Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

**§ 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.

**§ 3.5.3** The Contractor and each Subcontractor shall deliver to the Owner a signed affidavit stating that, to the best of its knowledge and belief, the Work has been constructed in accordance with the Contract Documents. The Architect or Project Manager will not issue the Final Certificate for Payment until the affidavit has been delivered to the Owner.

**§ 3.5.4** The Contractor and each Subcontractor shall guarantee that all of its Work will be free from defects of materials, equipment, and workmanship for one (1) year after the date of Substantial Completion or such longer period as is specified in the Contract Documents (the "Warranty Period"). The Contractor and each Subcontractor shall furnish prompt call back service during the Warranty Period at no additional cost to Owner, including any necessary adjustments, supplies and parts to keep the equipment in proper operation, except when such is made necessary by misuse, accidents, or negligence not caused by the Contractor, or its Subcontractors of any tier. Regularly scheduled routine maintenance during the Warranty Period shall not be covered and is the sole responsibility of Owner.

**§ 3.5.5** The Contractor further agrees that it will, at its own expense, repair and replace all defective Work, and all other work damaged thereby, which becomes defective or is discovered to be defective during the Warranty Period. Where guarantees or warranties are required, Contractor shall secure them from Subcontractors and Suppliers addressed to and in favor of the Owner. Delivery of guarantees or warranties shall not relieve the Contractor or Subcontractors from any obligation assumed under any other provisions of the Contract Documents.

**§ 3.5.6** Except as otherwise specifically provided in the Contract Documents, all warranties shall commence at the date of Substantial Completion of the Project. If any part of the Work is utilized by Contractor or any Subcontractor for any reason prior to Substantial Completion of the Project, the Contractor shall return such part of the Work to new condition as of the date of Substantial Completion of the Project. In the event Owner occupies any portion of the Work prior to Substantial Completion of the entire Work, the Warranty Period for the entire Work shall commence on Substantial Completion of the Work.

### **§ 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. Owner is a political subdivision of the State of Indiana and is exempt from Sales and Use Tax. An Exemption Certificate will be provided to the Contractor upon request.

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

**§ 3.7.1** Except as set forth in Section 2.3.1, the Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits and similar documents. All connection charges, assessments, or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the 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 all costs attributable to correction and proper restoration of the Work.

### **§ 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, the Project Manager and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Project Manager will promptly investigate such conditions and, if the Project Manager 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 Project Manager 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 Project Manager shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Project Manager'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 knowingly encounters and recognizes 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 providing 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,

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- .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 actual 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.

*(Paragraph Deleted)*

**§ 3.9.2** 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 Project Manager'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 anticipated 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 Project Manager's approval. The Project Manager'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 Project Manager 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 Project Manager.

**§ 3.10.4** The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Project Manager that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter "Milestone Dates"). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents. If not accepted by Owner, the construction schedule shall be promptly revised by the Project Manager in accordance with the recommendations of the Owner and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Project Manager of any delays or potential delays. The accepted construction schedule shall be updated at least monthly to reflect actual conditions (sometimes referred to herein as "progress reports")

or as otherwise requested by either the Owner or the Project Manager. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order. The schedule, as revised from time to time, shall become a part of the Contract Documents. The Contractor shall furnish sufficient labor forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the prosecution of the Work in accordance with the construction schedule.

**§ 3.10.5** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring compliance with the construction schedule.

1. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.
2. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

**§ 3.10.6** The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

### **§ 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 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 Project Manager, Architect and Owner, and delivered to the Project Manager 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 who shall comply with reasonable requirements of Owner regarding qualifications and insurance, 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 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**

**§ 3.13.1** 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.

**§ 3.13.2** Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

**§ 3.13.3** The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

1. **§ 3.13.4** Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Project in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.
- .1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.
- .2 The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the

Work.

### **§ 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 a fully finished condition, 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 all surrounding areas 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, the Project Manager 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 necessary for the conduct or completion of the Work. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, the Project Manager 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, Project Manager 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 Owner, Project Manager and Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by applicable law, the Contractor shall indemnify and hold harmless Owner, Project Manager, Architect and their respective consultants, agents, employees, officials and representatives (collectively "Indemnitees") 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), including loss of use resulting therefrom, 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.

**§ 3.18.3** The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

**§ 3.18.4** The Contractor (hereinafter "Indemnitor") hereby agrees to indemnify, save and hold harmless and defend at its own expense the Indemnitees against all claims, losses, damages, suits, costs and expenses, including reasonable attorneys' fees, or actions of any nature whatsoever which arise out of the Work to be performed by the Indemnitor; including without limiting the generality of the foregoing: all liability for claims for death or damage to property, including the loss of use thereof and consequential damages therefrom, or damages for economic loss to any agents, whether such claims are based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any Indemnitee or alleged to be caused by the joint, or several, or comparative (but not sole) negligence, breach of contract, breach of warranty, strict liability, or other breach of duty by any Indemnitee.

**§ 3.18.5** If any part of this provision is adjudicated to be contrary to law, the remaining parts of the provision shall in all other respects be and remain legally effective and binding. Moreover, this provision shall not be construed to eliminate or in any way reduce any other indemnification or right which the Owner or Contractor has by law.

**§ 3.18.6** The Contractor shall additionally indemnify and hold harmless all of the Indemnitees set out in Section 3.18.1 from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold-harmless obligations under this Contract.

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

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and Architect. Consent shall not be unreasonably withheld. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than fourteen (14) days unless otherwise specifically provided.

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

**§ 4.2.1** The Architect and Project Manager will provide administration of the Contract as described in the Contract Documents through and including completion of the Warranty Period for the Project. The Project Manager has the authority to act on behalf of the Owner as provided in the Contract Documents.

**§ 4.2.2** The Project Manager will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work, in accordance with the Contract Documents. However, the Project Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Project Manager 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 Project Manager will keep the Owner and the Project Manager 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 or Project budget, and (3) defects and deficiencies observed in the Work. The Project Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Project Manager 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 and Project Manager in all communications that relate to or affect the Architect's services or professional responsibilities. 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 Project Manager's evaluations of the Contractor's Applications for Payment, the Project Manager will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect or Project Manager shall reject Work that does not conform to the Contract Documents. Whenever the Architect or Project Manager considers it necessary or advisable, they 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 or Project Manager 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 or Project Manager 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 as necessary to ascertain their conformance with the requirements for the Work as indicated in the Contractor Documents. The Architect's review shall not be submitted for the purposes of confirming dimensions or quantities in those submittals except to the extent that the Contractor has requested the assistance of the Architect to determine certain dimensions because those indicated in the Construction Documents conflict with existing field conditions or because the dimensions in the Construction Documents contain erroneous, inconsistent, or incomplete information or dimensions for which clarifications are needed and can be supplied by the Architect. The Architect's action will be taken in accordance with the submittal schedule approved by Owner or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work 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 Project Manager will prepare Change Orders and Construction Change Directives for the Owner's review and approval. Upon approval the Project Manager will distribute the same. The Architect or Project Manager may, with Owner's approval, order minor changes in the Work as provided in Section 7.4. The Architect or Project Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect or Project Manager 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.

**§ 4.2.11** The Architect and Project Manager will interpret and advise the Owner concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Owner's response to such requests will be made in writing within any time limits established by Owner or otherwise with reasonable promptness as to not delay the Work.

**§ 4.2.12** Interpretations of the Project Manager (who shall act as the Initial Decision Maker) 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 from the Architect.

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

**§ 4.2.14** The Project Manager will review and respond to requests for information about the Contract Documents within seven (7) days of receipt. The Project Manager's response to such requests will be made in writing within any time limits established by Owner or otherwise with reasonable promptness as to not delay the Work. If appropriate, the Project Manager 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** No later than seven (7) days subsequent to the full execution of the Agreement, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor and (ii) the names of all persons or entities proposed as manufacturers or suppliers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Within 14 days of receipt of the information, the Architect or Project Manager 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 Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

*(Paragraph Deleted)*

**§ 5.2.3** 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**

**§ 5.3.1** 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 fully assume toward the Contractor all the obligations and responsibilities, including, but not limited to, 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 copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** All subcontracts shall be in writing in form and substance substantially similar to the Contractor's standard form subcontract and shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. The Owner shall have the right to review and approve Contractor's standard form of subcontract prior to Contractor entering into any agreement with Subcontractors. All subcontracts and supply contracts shall comply with the provisions of Ind. Code § 5-16-13 and each shall execute the affidavit attached hereto as Exhibit "A."

**§ 5.3.3** The Contractor shall pay each Subcontractor the amount to which the Subcontractor is entitled. The Contractor shall also require each Subcontractor to make similar payments to its Sub-subcontractors.

**§ 5.3.4** The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such prepurchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work

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obligations under the Contract Documents shall also apply to any prepurchased items, unless the Contract Documents specifically provide otherwise.

#### **§ 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. If the assignment is due to a termination of Contractor without cause, Owner shall indemnify and release Contractor for all claims and liabilities arising under such assigned contracts. If the assignment is due to a termination of Contractor for cause, Owner shall indemnify and release Contractor for claims and liabilities under assigned contracts arising subsequent to the date of assignment. In no event shall the indemnification apply to claims for fraudulent or intentionally wrongful conduct.

**§ 5.4.2** If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of 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.

**§ 5.4.4** Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

### **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. 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. In such event, Owner will provide Contractor with notice of any such engagement. Any Separate contractors shall coordinate their work with Contractor and be subject to Owner's scheduling and direction.

**§ 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 and Contract Sum. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement when directed by Owner to do so. 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.

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**§ 6.1.5** The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such prepurchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any prepurchased items, unless the Contract Documents specifically provide otherwise.

## **§ 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 Project Manager 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 Project Manager 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 Project Manager 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 with Owner's approval.

**§ 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. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an

increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

## **§ 7.2 Change Orders**

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

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

**§ 7.2.2** Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Order in Applications for Payment as if such Work were originally part of the Contract Documents.

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect or Project Manager and signed by the Owner and Architect or Project Manager, directing a change in the Work and stating a proposed basis therefore 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 By adding or deducting lump sum or 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 Project Manager 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 Section 7.3.11. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Project Manager 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 Owner;
- .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.

**Project Manager's determination, as specified above, shall not be less than the actual costs expended by the Contractor in performing the changed Work and shall be made in accordance with Section 7.3.11. If the Project Manager's determination is believed by the Contractor to be less than its actual**



costs (incurred or projected) in performing the Work, the Contractor will promptly proceed with the Work and may initiate dispute resolution procedures pursuant to Article 15. If the Project Manager's determination is believed by the Owner to be more than Contractor's actual costs (incurred or projected) in performing the Work, the Owner may initiate dispute resolution procedures pursuant to Article 15.

**§ 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 Project Manager 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 Project Manager. 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 Project Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Project Manager determines, in the Project Manager's professional judgment, to be reasonably justified. The Project Manager'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 Project Manager 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 Project Manager will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

**§ 7.3.11** In Section 7.3.4 the allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

- .1 For the Contractor, for work performed by the Contractor's own forces, 5.0% of the Direct Cost (as defined in Section 5.1.1 of the Agreement).
- .2 For the Contractor, for work performed by Subcontractors, 6.0% of the amount due the Subcontractor.
- .3 For increases constituting general conditions 2.0% of the Direct Cost.
- .4 Costs to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.4 and Article 6 of the Agreement.
- .5 In order to facilitate checking of quotations for extras or credits, proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. In no case will a change involving over \$500 be approved without such itemization.
- .6 For deduct Change Orders not signed by the Contractor, the Owner will hold funds equal to the deduct until signed.
- .7 Pricing for extra work is due within 10 days after issuing a Request for Pricing (RFP).

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

The Architect or Project Manager may order, with Owner's approval, 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 order for minor changes shall be in writing. If the Contractor believes that the proposed

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minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Project Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the order for a minor change without prior notice 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 in the most recent Owner-approved Project schedule 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, Project Manager or Architect, of an employee of either, or of a Separate Contractor; (2) by substantial and material changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually Inclement Weather 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 or Project Manager determines, justify delay, then the Contract Time shall be extended to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur, and (iii) is of a duration not less than one (1) day.

**§ 8.3.1.1** The Contractor shall not be allowed to claim Inclement Weather delay days for those days the U.S. Weather Bureau reports as the average number of days per month of Inclement Weather for the closest reporting station to the Project site. (Latest available information prior to executing the Contract.) The Contractor shall take this number of days and the Project Schedule into account when performing its Contract. Historical data for all areas may be obtained from:

U.S. Department of Commerce  
National Climatic Data Center  
Federal Building  
Asheville, NC 28801  
Phone: 703.259.0682

The Contractor shall include in the Contract Sum sufficient monies to cover the required manpower, equipment, protection, etc. to complete his Work in accordance with the Project schedule accounting for Inclement Weather. It is the Contractor's obligation to provide a copy of the "National Climatic Center" report with any weather delay claim filed. This includes the current information as well as the monthly averages available at the time of the

Contract.

**§ 8.3.1.2** Inclement Weather shall be defined as wind, rain, snow, sleet, hail or other forms of weather that prohibits/halts the ability of the Contractor to make meaningful progress on the Work. If the Work has progressed to the point that Inclement Weather does not affect the progress of the Work no delay can be claimed. The Contractor shall make reasonable provisions to overcome the effects of Inclement Weather (i.e. mud, snow, standing water, etc.) and shall not receive an extension of the Contract Time due to such effects unless such provisions are not reasonably practicable under the circumstances.

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

**§ 8.3.3** Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole remedy for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance, interference, suspension or obstruction in the performance of the Work (including unusually Inclement Weather), (iii) loss of productivity, or (iv) other similar claims (items i through iv herein collectively referred to in this Section 8.3.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Section 8.3.1., and, to the extent permitted under this Section 8.3.3, an adjustment in the Contract Sum. In no event shall the Contractor be entitled to any other compensation or recovery of any damages under or pursuant to this Section 8.3.3 in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages, or other similar remuneration.

- .1** The Contractor shall be permitted an adjustment in the Contract Sum if any reasonably unforeseeable Delays, either individually or taken in the aggregate, cause the Contract Time to be increased by more than fifteen (15) days (the "Grace Period"). Any adjustment in the Contract Sum under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs actually incurred by the Contractor as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Grace Period.
- .2** Both the Owner and the Contractor acknowledge and agree that the Grace Period shall not apply to a Delay caused by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Contractor has incurred Delays that, in the aggregate, exceed the Grace Period.

**§ 8.3.4** As to a specific occurrence that caused delay, the Contractor shall notify the Owner within five (5) days of its discovery of the occurrence, and any request for an extension under Subparagraph 8.3.1 shall be made within seven (7) days of the time the Contractor first learns of the occurrence. As to a condition or continuing occurrence which causes delay, the Contractor shall notify the Owner within five (5) days of determining that a delay is likely, and any request for an extension under Section 8.3 shall be made within seven (7) days of the time the Contractor first determines that a delay is likely to occur. Such request shall (a) state the cause for the delay; (b) describe the portion of the Work affected thereby; (c) estimate the duration of the delay, and (d) provide all details pertinent thereto. Failure to provide timely notice shall be deemed a waiver of any claim for an extension. Notice shall be provided by the Contractor to the Owner within five (5) days after the cause for the delay has ceased to exist.

## **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**

The Contractor shall submit a schedule of values to the Architect and Project Manager 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 Project Manager. This

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schedule, unless objected to by the Project Manager, 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 Project Manager and supported by such data to substantiate its accuracy as the Project Manager may require, and unless objected to by the Project Manager, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.2.2** The Contractor shall prepare a trade payment breakdown for the Work for which the Contractor and each Subcontractor is responsible, such breakdown being submitted on a uniform standardized form approved by the Project Manager. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by Owner or the Project Manager as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later is found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

### **§ 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 Project Manager 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, Project Manager or Architect require. Unless otherwise directed by the Architect, the form of Application for Payment, shall be AIA Document G702-2009 Application and Certification for Payment, supported by AIA Document G703-1992 Continuation Sheet. No other forms of Application for Payment will be acceptable. Continuation Sheet (G703) shall be prepared the same as in the Schedule of Values submitted by the Contractor and as approved by the Architect or Project Manager.

**§ 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 determinations of the Project Manager, but not yet included in Change Orders.

**§ 9.3.1.2** Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Contractor's lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and material supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and suppliers; (ii) duly executed waivers of mechanics' and suppliers' liens from all Subcontractors, suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner, Project Manager or the Architect.

**§ 9.3.1.3** Unless retainage is reduced by Owner pursuant to the Contract Documents, monthly payments will be approved by the Architect or Project Manager based on ninety-five percent (95%) of the estimated value of labor performed and materials/equipment incorporated in the Work plus ninety-five percent (95%) of the value of non-perishable materials suitably stored at the Project site for future incorporation in the Work. No such materials are to be removed from the Project site without permission of the Owner. Upon Substantial Completion of the Work, a sum shall be paid to increase total payments to the Contractor to ninety-five percent (95%) of the Contract Sum, subject to other withholdings allowed by the Contract Documents.

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

insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Fifty Thousand Dollars (\$50,000.00) at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner, including, without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

**§ 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.

- .1 **The Contractor further expressly undertakes to defend the Indemnitees, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Contractor, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.**
- .2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (1) issued by a surety acceptable to the Owner; (2) in form and substance satisfactory to the Owner, and (3) in an amount not less than one hundred fifty percent (150%) of such lien claim. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this paragraph 9.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the Contractor's responsibility and shall not be part of, or cause any adjustment to, the Contract Sum.
- .3 The Contractor agrees to waive any right it may have to assert a mechanic's or other lien against the Project site and any improvements on it, including, without limitation, the Work itself. Further, the Contractor will cause a similar provision, waiving any right to a mechanic's lien or other lien against the property, to be included in all of its subcontracts, any sub-subcontracts, and all contract with suppliers. Upon execution of the Agreement, the Contractor shall also execute all waivers of lien required by the Contract Documents.
- .4 Notwithstanding the foregoing, the Owner reserves the right to settle any dispute or threatened mechanic's or supplier's lien claim by payments to the claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made and all costs incurred therefore, including attorneys fees.

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

**§ 9.4.1** The Project Manager will, within seven days after receipt of the Contractor's Application for Payment and all required supporting documentation, 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 Project Manager determines is properly due, and notify the Contractor and Owner of the Project

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Manager'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 Project Manager'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 Project Manager to the Owner, based on the Project Manager's evaluation of the Work and the data in the Application for Payment, that, to the best of the Project Manager'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 Project Manager. However, the issuance of a Certificate for Payment will not be a representation that the Project Manager has (1) made 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.

**§ 9.4.3** If, subsequent to issuing any Certificate for Payment pursuant to this Section 9.4, Project Manager should determine that any previous Certificate for Payment was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then Project Manager shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Contractor as well as the reason for such revision.

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

**§ 9.5.1** The Project Manager may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Project Manager's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Project Manager is unable to certify payment in the amount of the Application, the Project Manager will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Project Manager cannot agree on a revised amount, the Project Manager will promptly issue a Certificate for Payment for the amount for which the Project Manager is able to make such representations to the Owner. The Project Manager 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 Project Manager'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 Contractor defaulting on the performance of any of its obligations under the Contract Documents, including but not limited to: failure to provide sufficient skilled workers; Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project Schedule; or failure to follow the directions of or instructions from the Owner or Project Manager.
- .2 defective Work not remedied;
- .3 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .4 failure of the Contractor to make payments to Subcontractors or suppliers for labor, materials or equipment;

*(Paragraph Deleted)*

- .5 damage to the Owner or a Separate Contractor;
- .6 failure to carry out the Work in accordance with the Contract Documents; or
- .7 notification the Contractor has failed to make payments to Subcontractors or suppliers out of moneys due and previously paid to and certified by Contractor as due and owing.

**§ 9.5.2** When either party disputes the Project Manager'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 within 21 days of receiving written notice from the Project Manager of such decision.

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

**§ 9.5.4** If the Project Manager 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 Project Manager and the Contractor shall reflect such payment on its next Application for Payment.

#### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Project Manager 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 Project Manager.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than ten (10) business 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, Project Manager or 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.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents for Work certified by the Architect or Project Manager as completed, the Contractor shall defend and indemnify the Indemnitees (as defined in Section 3.18.1) 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**

**§ 9.7.1** If the Project Manager 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 and all supporting documents, or if the Owner does not pay the Contractor within fourteen (14) days after the date established in the Contract Documents, the amount certified by the Project Manager or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Project Manager, 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.

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**§ 9.7.2** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

#### **§ 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. Unless otherwise determined by Owner, the Work will not be considered suitable for Substantial Completion review until all systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections, licenses, permits and certifications have been made and posted, satisfactory instruction of Owner's personnel in the operation of the systems has been completed, and all final finishes within the Contract Documents are in place. In general, the only remaining Work shall be minor in nature, so that the Owner or Owner's tenants could occupy the premises on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's or Owner's tenants' (or those claiming by, through or under Owner) normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) days or as otherwise agreed upon following the Date of Substantial Completion.

**§ 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 Project Manager a comprehensive list of items to be completed or corrected prior to final payment ("Punch List items"). 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. Punch List items shall be resolved to Owner's satisfaction within thirty (30) days of Punch List submittal.

**§ 9.8.3** Upon receipt of the Punch List, the Project Manager will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Project Manager's inspection discloses any item, whether or not included on the Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Project Manager. In such case, the Contractor shall then submit a request for another inspection by the Project Manager 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. As provided in the Agreement, Owner may withhold 200% of the estimated cost of the completion of Punch List items as retainage.

#### **§ 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 Project Manager 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 Project Manager. For any partial occupancy or use, the Owner shall reduce retainage proportionally to the Contractor at the time of partial occupancy or use.

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

**§ 9.9.3** Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### **§ 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. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Project Manager as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect or Project Manager until all warranties and guarantees have been received and accepted by the Owner.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect or Project Manager (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) all 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. The Owner will require the submission of such proof or evidence before final payment will be approved or made. The following must be submitted to the Owner before approval of final payment:

- .1 Affidavit of payment as required in this Section shall be in the form of AIA Document G706-1994 Contractor's Affidavit of Payment of Debt and Claims.
- .2 Release of liens as required in this Section shall be in the form of AIA Document G706-1994 Contractor's Affidavit of Release of Liens.
- .3 Consent of surety as required in this Section shall be in the form of AIA Document G707-1994 Consent of Surety Company to Final Payment.
- .4 Submit releases and final Waivers of Lien from all Subcontractors and suppliers.
- .5 Statement on Contractor Letterhead stating "Punch List items are all completed."
- .6 All as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees,

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warranties, bonds and other deliverables related to the Work and assignments of all guarantees and warranties from Subcontractors, vendors, suppliers and manufacturers.

.7 The affidavit of compliance required by Section 3.5.3.

.8 All other documents and certifications required by the Contract Documents.

**§ 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 and correctly completed, corrected, and accepted. If the remaining balance for Work not fully and correctly 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 and correctly 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 after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of all claims by that payee except those previously made in writing and identified in writing 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 be solely responsible for Project safety, and shall take reasonable precautions for safety of, and shall provide all 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. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all reasonable measures necessary to protect any property adjacent to the Project and any improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor.

**§ 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, Project Manager 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 other obligations under the Contract Documents.

**§ 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 Project Manager. The Contractor shall promptly report in writing to the Owner and Project Manager all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Project Manager.

**§ 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.

**§ 10.2.9** It is an expressly stated requirement that asbestos-containing building materials shall not be used on this Project. Each Subcontractor shall submit, on Subcontractor's letterhead the following statement: "I hereby certify to the best of my knowledge, no asbestos containing materials was used as a building material during this project." This statement shall be included in the documents submitted for final payment.

**§ 10.2.10** In addition to all of its other obligations listed herein, Contractor and all Subcontractors shall comply with the Indiana Occupational Safety and Health Act (Section 22-8-1.1 et. seq.), the Williams-Steiger Occupational Safety and Health Act of 1970 (Public law 91-596) (all as amended); Part 1910 - Occupational Safety and Health Standards, Title 29, Code of Federal Regulations; Part 1926 - Safety and Health Regulations; and (to the extent not inconsistent with the foregoing) all applicable safety recommendations of the Associated General Contractors of America, the American National Standards Institute, the National Fire Protection Association, all special safety and security requirements of the Owner or Architect, and all other applicable safety laws and regulations of all federal, state and/or local governmental bodies having jurisdiction.

**§ 10.2.11** In accordance with Ind. Code 36-1-12-20, in the event that the Project requires creation of a trench of at least five (5) feet in depth, OSHA Regulation 29CFR 1926, Subpart P, for Trench Safety Systems, is hereby incorporated by reference into the Contract Documents. The cost of such Trench Safety Systems shall be identified as a separate pay item, or in the pay item of the principal Work for which the Trench Safety System is associated. All such costs are included in the Contract Sum.

**§ 10.2.12** In accordance with Ind. Code 36-1-12-21, in the event the Project requires the installation of plumbing, the Contractor or Subcontractor responsible for such work shall submit evidence to the Project Manager that such person is a licensed plumbing contractor under Ind. Code 25-28.5-1, or this Contract is void.

**§ 10.2.13** The Contractor shall comply with all MSDS standards.

**§ 10.2.14** When all or a portion of the Work is suspended for any reason, the Contractor and each Subcontractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

### **§ 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 an undisclosed hazardous material or substance (as defined under state or federal law), 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 Project Manager 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 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 Project Manager 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. 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 incurred under this paragraph. The term "rendered harmless" shall be interpreted to mean that levels of hazardous substances, asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations or other appropriate state or federal standard. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

**§ 10.3.3** 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 or any Subcontractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.4** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor or any Subcontractor 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.

**§ 10.3.5** 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 licensed and authorized to issue insurance in Indiana. The Indemnities, the Project Manager, the Architect, and their respective consultants shall be named as additional insureds under the Contractor's commercial general liability policy, automobile liability policy, umbrella policy and all other policies other than worker's compensation as described in the Contract Documents.

**§ 11.1.2** The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Indiana, in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

- .1 Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Owner in the Owner's sole judgment.
- .2 Bonds shall be executed by a responsible surety licensed in the State of Indiana, with a Best's rating of no less than A/XII, and shall remain in effect for a period not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
- .3 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.
- .4 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.
- .5 Every Bond under this Section 11.1.2 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:
  - .a The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.
  - .b The Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or the Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner within thirty (30) days thereof, and the Owner shall have thirty (30) days from the time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, postage prepaid, to the Lender and the Owner.
  - .c Pursuant to Ind. Code 36-1-12-14, the Surety further agrees that any defect in the Construction Documents or in the proceedings preliminary to the letting and awarding of the Contract shall not discharge the Surety.

**§ 11.1.3 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work. 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.

**§ 11.1.5** The Contractor shall cause its commercial liability coverage, including excess and commercial umbrella liability coverage, if any, required by the Contract Documents to include (1) the Indemnities, the Project Manager, the Architect and their respective consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations, using an appropriate ACORD certificate reasonably acceptable to Owner; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the

Contractor's completed operations, using an appropriate ACORD certificate reasonably acceptable to Owner. Additional insured coverage as required in this subparagraph shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to, or maintained by, the Owner or the Indemnites. Contractor shall also require Subcontractors to provide additional insured coverage for the Indemnites, the Architect, the Architect's consultants and Contractor with insurance reasonably satisfactory to the Contractor on the same form as applicable to the Contractor for additional insured coverage. If the additional insureds have other insurance that is applicable to the loss (including but not limited to builders risk insurance), such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability under the Contractor's or Subcontractors' insurance policies shall not be reduced by the existence of such other insurance.

#### **§ 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 licensed and authorized to issue insurance in Indiana.

#### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner, Indemnities 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; (3) Project Manager and Project Manager's consultants; and (4) 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.

#### **§ 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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner'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 or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner 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 commence the correction of Work rejected by the Architect or Project Manager 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 and Project Manager's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contractor is responsible.

#### **§ 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 defective or otherwise 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. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Project Manager 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. Upon completion of any Work under or pursuant to this Section 12.2, the one (1)-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

**§ 12.2.2.3** The obligations under Section 12.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

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

**§ 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 or at law or in equity. 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 pursuant to a Change Order, in which case the Contract Sum will be reduced or increased as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the State of Indiana, excluding that jurisdiction's choice of law rules and any such rights and remedies shall survive the acceptance of the Work and completion or termination of the Contract Documents.

### **§ 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 or elsewhere in the Contract Documents, 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 including those rights and obligations incurred prior to the date of assignment. The Contractor shall execute all consents reasonably required to facilitate the assignment.

**§ 13.2.3** The Contract Documents and the terms and provisions thereof shall inure to the benefit of and be binding upon successors and assigns of the parties.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Except as expressly provided in the Contract Documents, 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, Project Manager, 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 in the Contract Documents, 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 Project Manager and Owner timely notice of when and where tests and inspections are to be made so that the Project Manager and Owner 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 are concluded unless such requirements were included in the Specifications or were known or should have been known by Contractor. The Owner shall 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 and Owner of when and where tests and inspections are to be made so that the Architect and Owner 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 and Project Manager's services and expenses, shall be at the Contractor's expense. The costs of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by Contractor.

**§ 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 Project Manager.

**§ 13.4.5** If the Project Manager or Owner is to observe tests, inspections, or approvals required by the Contract Documents, the Project Manager will do so promptly and 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.

**§ 13.4.7** Additional provisions pertaining to testing are included in the Project Manual and elsewhere in the Construction Documents.

### **§ 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.

### **§ 13.6 General Provisions**

**§ 13.6.1** All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract. The use herein of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

**§ 13.6.2** Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable. In the event any preprinted terms of the AIA Documents comprising the Contract Documents conflicts with a transcribed addition or deletion thereto, the transcribed addition or deletion shall prevail. Where the terms of this Agreement and the provisions of the Owner-Contractor Agreement conflict, the

Owner-Contractor Agreement shall control the agreement between the Owner and Contractor.

**§ 13.6.3** Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

**§ 13.6.4** Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis only and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of the Contractor or a Subcontractor of any tier under the Contract Documents.

**§ 13.6.5** Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and is also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

**§ 13.7 No Oral Waiver**

The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by the other party hereto. No person is authorized on behalf of Owner or Contractor to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Owner's or Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Owner or Contractor shall be limited to the specific matters stated in the signed writing, and shall not relieve the other party of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

**§ 13.8 Notices Regarding Liens**

Contractor shall provide all notices required or permitted by the laws of the State of Indiana for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state of Indiana. Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, Sub-subcontractors, and/or suppliers to Contractor.

**§ 13.9 Survival**

This Agreement and the representations, covenants, rights, duties and obligations provided for herein shall survive the completion or termination of the Project and this Agreement.

**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 60 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; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped.

*(Paragraphs Deleted)*

**§ 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, 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 and failure to cure, terminate the Contract and recover from the Owner payment for Work properly and fully completed and direct costs incurred by the Contractor for the termination of subcontracts and supply contracts 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 persistently 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 and failure to cure, 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 persistently 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; disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .3 otherwise is guilty of a material breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, 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, fourteen (14) days' notice and failure to cure, 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 and Project Manager'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** For suspensions, delays or interruptions individually exceeding ninety (90) consecutive days, 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. 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** Upon such termination, the Contractor shall recover as its sole remedy payment for Work fully and properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions fully and properly performed. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. Any such payment to contractor pursuant to this Section 14.4.3 constitutes the exclusive remedy Contractor may have against Owner for its work on the Project once Owner has terminated Contractor for convenience, and is in place of any other claim or recovery Contractor may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of 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. 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; provided, however, that the claimant shall use its best efforts to furnish the Initial Decision Maker and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. 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. Claims may also be reserved in writing within the time limits set forth in this Section 15.1.3.1. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section 15.2 shall not commence until a written notice from the claimant is received by the Initial Decision Maker. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 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 or Project Manager 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. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If unusually Inclement Weather is 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, had an adverse effect on the scheduled construction and meet all of the requirements of Section 8.3.1.

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

Except to the extent covered by the valid and collectible insurance required respectively to be carried by Contractor or Owner under Article 11 or in the Contract Documents, the Contractor and Owner waive all claims against each other for consequential damages arising out of or relating to this Contract; provided, however, that in no event shall this mutual waiver

be deemed to preclude (i) an award of liquidated damages recoverable under the Agreement; or (ii) the obligation of the Contractor to reimburse the Owner for any fines from governmental entities or additional costs and expenses for the Architect, Project Manager or other consultants, or Separate Contractors, arising out of any negligent act or omission of the Contractor.

*(Paragraph Deleted)*

**§ 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 decision. The Project Manager will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, a decision shall be required as a condition precedent to mediation of any Claim. If a 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 proceed under Section 15.3 below.

§ 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, or (4) suggest a compromise.

§ 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 a decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect of any change in the Contract Sum or Contract Time or both. The 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 a decision by the Initial Decision Maker at any time, subject to the terms of Section 15.3.

*(Paragraph Deleted)*

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

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

**§ 15.2.9** The decision of the Initial Decision Maker in response to a Claim shall not be a condition precedent to mediation and binding dispute resolution in the event (1) the positions of the Initial Decision Maker and Architect are vacant, or (2) the Claim relates to a construction lien.

### **§ 15.3 Dispute Resolution**

All claims and disputes arising under the Contract Documents shall be resolved in accordance with this Article 15.

The parties to this Agreement shall not be obligated to resolve by arbitration any Claim or dispute related to the Contract Documents or this Agreement. Any reference in the Contract Documents or this Agreement which requires arbitration in connection with any Claims or disputes between Owner and Contractor or other parties is hereby deemed void and shall instead refer to the dispute resolution provisions of this Article 15.

**§15.3.1** The parties are fully committed to working with each other cooperatively throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, each party commits to working to resolve such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**§15.3.2** The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement promptly in the field, and if not resolved, by negotiations between executives of the parties who have authority to settle the controversy. In the event negotiations shall not successfully resolve the controversy or Claim, the parties agree to endeavor to expeditiously settle the dispute in an amicable manner by non-binding mediation in accordance with Rule 2 of the Indiana Rules for Alternative Dispute Resolution, with a mediator experienced in construction selected by agreement of the parties. Mediation shall take place in Johnson County, Indiana or such other county where the Project is located. The parties shall share equally in the costs of mediation.

**§15.3.3** In the event of any unresolved Claim or dispute, or in the event a party disagrees with any decision of the Initial Decision Maker, the disputing party shall give the other party written notice of the Claim or dispute, with such notice to contain the following:

- .1 A statement specifying that a Claim or dispute has occurred that falls within this dispute resolution Article.
- .2 A statement of the disputing party's position and a summary of the evidence and arguments supporting that position.
- .3 The name and title of the senior executive who will represent the disputing party.

**§ 15.3.4** Within ten (10) days after receipt of the disputing party's notice, the responding party shall submit to the disputing party a written response, with such response to contain the following:

- .1 A statement of the responding party's position and a summary of the evidence and arguments supporting the position.
- .2 The name and title of the senior executive who will represent responding party.

**§ 15.3.5** The executives shall meet in Johnson County, Indiana, or such other county where the Project is located, at a mutually acceptable time and place within ten (10) days after receipt by disputing party of responding party's response and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days after receipt by the disputing party of responding party's notice, or if the responding party refuses or fails to meet with disputing party to commence settlement negotiations within ten (10) days after receipt of responding parties response, or within any extension of time granted by disputing party, mediation shall be requested by the disputing party. A period of forty-five (45) days from the date of the mediation request shall be allowed for non-binding mediation or settlement in accordance with Rule 2 of the Indiana Rules of Alternative Dispute Resolution, and if such Claim or dispute is not resolved at the end of such period, or any agreed upon extension of time thereto, either party may initiate litigation in the state or federal courts provided below.

**§ 15.3.6** Notices required under dispute resolution procedures set forth in this Article 15 shall be sent by U.S. registered or certified mail, postage prepaid or by recognized overnight carrier with confirmation of delivery.

#### **§15.4 Resolution by Litigation**

**§15.4.1** Except as provided in § 15.5, as a condition precedent to initiating any court proceeding, the parties must first comply fully with the dispute resolution provisions set forth in §15.3. If either party commences a legal action against the other party without having followed the dispute resolution procedures set forth in §15.3, the party commencing the legal action shall indemnify and hold harmless the other party for any and all legal expenses, including attorney's fees, arising out of the litigation of the action.

**§15.4.2** If the dispute resolution procedures set forth in §15.3 are followed without the parties resolving their dispute, either party may commence legal action against the other party. Should any dispute between the parties to the Contract Documents proceed to litigation, the successful party in such proceeding shall be awarded its reasonable attorney's fees, disbursements and costs incurred in connection with the prosecution or defense of the dispute.

**§15.4.3** Any legal action commenced under this Agreement shall be brought in the state or federal courts with jurisdiction in Johnson County, Indiana and the parties waive any objection to jurisdiction or venue in such courts, including any claim for *forum non-conveniens*. All applicable statutes of limitation shall be tolled while the dispute resolution procedures specified in §15.3 are pending. The parties will take such action, if any, required to effectuate tolling of the applicable statute(s) of limitation.

### **§15.5 Injunctive Relief**

Nothing contained in this Article 15 shall prevent a party from pursuing and receiving court-ordered injunctive or other equitable relief to stop, reduce or prevent conduct or threatened conduct causing or that would be likely to cause damage to such party or its business caused by a default hereunder by the other party or its contractors, agents or representatives.

### **§15.6 Arbitration by Agreement**

Nothing contained in this Article 15 shall prohibit the parties hereto from submitting Claims or disputes to binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA if both parties agree to such binding arbitration, with an arbitrator mutually agreed upon. Any such arbitration shall take place in Johnson County, Indiana or such other county where the Project is located. In such event, the parties shall share equally in the arbitration fees incurred in such binding arbitration.

### **§15.7 Consolidation**

Owner, Contractor and Subcontractors agree that any dispute resolution, arbitration or litigation shall be joined or consolidated with any dispute resolution, arbitration or litigation involving any other party to the Project which: (a) is necessary to resolve the Claim or dispute; (b) is substantially involved or affected by such claim or dispute; or (c) substantially involves common questions of law or fact.

## **ARTICLE 16 COMPLIANCE WITH INDIANA LABOR LAWS**

### **§ 16.1 Antidiscrimination**

In accordance with Ind. Code §5-16-6-1 the Contractor and each Subcontractor of any tier, or anyone acting on their behalf, shall not discriminate against or intimidate any citizen of the State of Indiana who is qualified and available to perform Work hereunder on the basis of race, religion, color, sex, disability, national origin, ancestry or veteran status. A violation of this provision shall result in a deduction of \$5.00 per person for each calendar day of such violation. In the event of a second violation of this provision the applicable contract or subcontract may be cancelled or terminated and all amounts due or to become due thereunder may be forfeited. Pursuant to Ind. Code § 22-9-1-10, a breach of this covenant may be regarded as a material breach of this Agreement.

### **§ 16.2 E-Verify**

The Contractor and each Subcontractor of any tier shall submit to the Contractor, the E-Verify Case Verification Number for each individual who is required to be verified under Ind. Code § 22-5-1.7 prior to that individual beginning work on the Project. An individual who is required to be verified under Ind. Code § 22-5-1.7 whose final case result is "final non-confirmation" may not be employed on the Project. Contractor and Subcontractors of every tier must enroll in and verify the work eligibility status of all newly hired employees of the Contractor or the Subcontractor through the E-Verify program as long as the E-Verify program is in existence.

### **§ 16.3 No Cash Payment**

The Contractor and each Subcontractor of any tier may not pay cash to any individual employed for work done by any individual on the Project.

**§ 16.4 Minimum Insurance** The Contractor and each Subcontractor of any tier must maintain general liability insurance with limits of no less than \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate. This provision shall not alter any requirement of the Contract Documents for greater insurance coverage.

### **§ 16.5 Wage Laws**

The Contractor and each Subcontractor of any tier must remain in compliance with the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-209), Ind. Code § 22-2-2-1 through Ind. Code § 22-2-2-8 (Minimum Wage requirements). A Contractor and Subcontractor of any tier must be in compliance with Ind. Code § 22-3-5-1 and Ind. Code § 22-3-7-34 (Workers Compensation Insurance requirements) and Ind. Code § 22-4-1 through Ind. Code § 22-4-39.5 (Unemployment Compensation requirements).

### **§ 16.6 Drug Testing**

For contracts of \$150,000 or more, the Contractor and a Subcontractor of any tier must be in compliance with Ind. Code § 4-13-18-1 through Ind. Code § 4-13-18-7 (Drug Testing of Employees on Public Works Contracts). Bid responses must include a written plan for employee drug testing with their bid response or if subject to collective bargaining agreement, a copy of the relevant part of the agreement regarding drug testing.



**§ 16.7 Training Program**The Contractor and each Subcontractor of any tier that employs ten (10) or more employees must provide access to a training program applicable to the tasks to be performed in the normal course of the employee's employment through:

- .1 an apprenticeship program;
- .2 a program offered by Ivy Tech Community College or Vincennes University;
- .3 a program established by or for the Contractor;
- .4 a program offered by an entity sponsored by the United States Department of Labor, Bureau of Apprenticeship and Training;
- .5 a program that results in the award of an industry recognized portable certification;
- .6 a program approved by the United States Department of Transportation; or
- .7 a program approved by the Indiana Department of Transportation.

**§ 16.8 Apprenticeships and Training**

The Contractor and each Subcontractor of any tier that employs fifty (50) or more journeymen must participate in an apprenticeship or training program that meets the standards established by or has been approved by any of the following:

- .1 United States Department of Labor;
- .2 Bureau of Apprenticeship and Training;
- .3 the Indiana Department of Labor;
- .4 the United States Department of Transportation Federal Highway Administration; or
- .5 the Indiana Department of Transportation.

**§ 16.9 State Qualification**

For contracts of \$300,000 or more, the Contractor and Subcontractors of any tier must be qualified under either of the following before performing any work on the Project: Ind. Code § 4-13.6-4 or Ind. Code § 8-23-10 (State Public Works Projects Qualification).

**§ 16.10 Payroll Records**

The Contractor and Subcontractors of any tier must preserve payroll and related records for a period of three (3) years after final completion of the Project and leave such records open to inspection by the Department of Workforce Development.

**§ 16.11 Affidavit**

A Subcontractor's Acknowledgement is included as Exhibit "A" and must be obtained by the Contractor and submitted to Owner by every Contractor and Subcontractor of any tier on the Project upon award of contract. The Contractor's Acknowledgement shall become part of the Contract Documents. If applicable, copies of certification under Ind. Code §4-13-6-4 *et seq.* and evidence of an employee drug testing program as required by Ind. Code §4-13-18 *et seq.* must be attached to the acknowledgement.

**§ 16.12 Compliance**

Contractors and Subcontractors failing to comply with the provisions of this Article 16 may be determined to be not responsible for future bidding requirements for a period of up to forty-eight (48) months and may be subject to additional requirements and penalties as provided in applicable law.

**§ 16.13 Steel Products**

In accordance with Ind. Code 5-16-8, if steel or foundry products are to be utilized or supplied in the performance of the Work, only steel products produced in the United States shall be used. Reference is hereby made to such statute for definitions applicable to this Section. Owner may not authorize or make any payment to Contractor unless Owner is satisfied that Contractor has fully complied with this provision and may require an affidavit evidencing the same prior to any payment to Contractor.

## EXHIBIT "A"

### SUBSUBCONTRACTOR'S ACKNOWLEDGMENT

The undersigned Subcontractor certifies under the penalties of perjury, and in accordance with Ind. Code §5-16-13 *et seq.* and Ind. Code §22-5-1.7-11.1 *et seq.* as follows:

1. The Subcontractor has enrolled in and will verify the work eligibility status of all newly hired employees through the E-Verify program so long as the E-Verify program is in existence.
1. The Subcontractor does not and shall not knowingly employ an unauthorized alien.
1. The Subcontractor shall receive a certification from each sub-subcontractor of any tier on the project that, at the time of certification, the sub-subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled and is participating in the E-Verify program.
1. If the Subcontractor's contract is for \$150,000 or more, Subcontractor has established an employee drug testing program in compliance with I.C. §4-13-18 *et seq.* and has attached hereto the written plan for the program or a copy of the relevant part of the collective bargaining agreement providing for such program.
1. If the Subcontractor's contract is for \$300,000 or more, I have attached a current certificate of qualification issued by the State of Indiana under I.C. §4-13.6-4 or I.C. §8-23-10.
1. If Subcontractor employs ten (10) or more employees Subcontractor provides access to a training program applicable to the tasks to be performed in the normal course of the employee's employment with the Subcontractor through:
  2. an apprenticeship program;
  3. a program offered by Ivy Tech Community College or Vincennes University;
  4. a program established by or for Subcontractor;
  5. a program offered by an entity sponsored by the United States Department of Labor, Bureau of Apprenticeship and Training;
  6. a program that results in the award of an industry recognized portable certification;
  7. a program approved by the United States Department of Transportation; or
  8. a program approved by the Indiana Department of Transportation.
1. If Subcontractor employs fifty (50) or more journeymen, Subcontractor participates in an apprenticeship or training program that meets the standards established by or has been approved by any of the following:
  2. United States Department of Labor;
  3. Bureau of Apprenticeship and Training;
  4. the Indiana Department of Labor;
  5. the United States Department of Transportation Federal Highway Administration; or
  6. the Indiana Department of Transportation.

On behalf of Subcontractor, I hereby acknowledge and certify under the penalties of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

### SUBCONTRACTOR

Date: \_\_\_\_\_ By: \_\_\_\_\_

(Printed Name and Title)

Init.

SECTION 00 22 13 - SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

The following supplements modify, change, delete from or add to the Instructions to Bidders AIA Document A701, 2018 Edition. Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

ARTICLE 1 - DEFINITIONS

Make the following modifications:

- 1.2 Delete "...AIA Document A201,..."
- 1.3 Change to read "...issued by the OTR and Architect..."

Add the following:

- 1.10 As Contracts will be awarded on or after July 1, 2015, the wage determination provisions of I.C. 5-16-7 (Common Construction Wage) do not apply to this project; however, successful Bidders shall be required to comply with the provisions of House Enrolled Act 1019 (2015) as further detailed in the Contract Documents. See Specifications Section 00 23 13.

ARTICLE 2 - BIDDER'S REPRESENTATIONS

Add the following subparagraph:

- 2.1.4.1 No claims for extra compensation shall be allowed due to failure of any Bidder to examine conditions which exist at the building site nor for conditions or difficulties encountered in execution of work which may have been avoided by such prior examination.

Add the following:

- 2.2 Each Bidder by submitting a Bid also agrees that, if accepted by the Owner, its Bid will constitute an unconditional offer to enter into a binding contract directly with the Owner and agrees to enter into such contract in accordance with the intent and terms of the Contract Documents.
- 2.3 It is the purpose and intent of the Contract Documents, that a complete job be accomplished. It shall be each Bidder's responsibility to include costs necessary to provide labor and materials for that portion of the Work bid upon, including incidentals, whether or not specifically called for in the Specifications and/or Drawings.