

# Project Manual

Issue Date: 12-18-2024

Owner: Traill County

Project:

**Courthouse**

**East Steps Restoration**

114 West Caledonia

Hillsboro, ND 58045

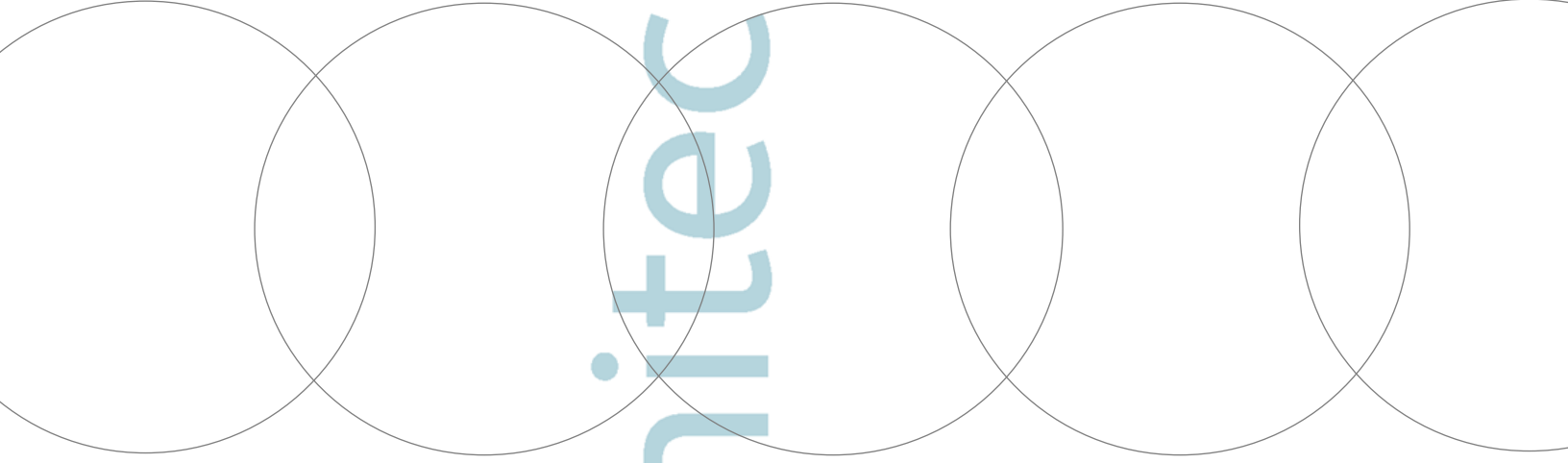
Project No: 2024-11

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# architecture



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PLANS AND SPECIFICATIONS FOR:

Owner: Traill County

**Project: Courthouse East Steps Restoration**

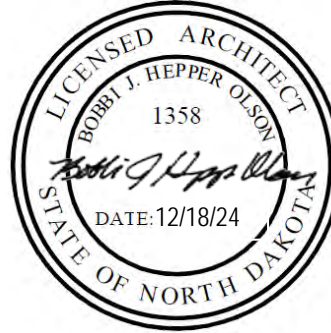
114 West Caledonia, Hillsboro, ND 58045

Architect's Project No: 2024-11

Date of Issuance: 12-18-2024

## ARCHITECT

I hereby certify that this plan, specification, or report was prepared by me or under my direct supervision, and that I am a duly Registered Architect under the laws of the State of North Dakota.



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## **Document 00 10 50 - Advertisement for Construction Bids**

Advertisement to run in - Fargo Forum 12/18/24, 12/25/24, 01/01/25  
- Hillsboro Banner 12/20/24, 12/27/24, 01/03/25

**Project:** TRAIL COUNTY COURTHOUSE – EAST STEPS RESTORATION  
114 West Caledonia, Hillsboro, ND 58045  
Architect's Project Number: 2024-11

**Owner:** Traill County  
114 West Caledonia, Hillsboro, ND 58045

**By:** Hepper Olson Architects, Ltd.  
429 Broadway , PO Box 147  
Buxton, ND 58218  
Phone: 701-841-1000  
bobbi@hepperolson.com

**Prebid Conference:** Tuesday, January 7, 2025 @ 11:00 am at Traill County Courthouse.

**Bids Close:** Tuesday, January 14, 2025 @ 11:00 am  
Bids received after the designated time will not be accepted. Bids will be opened and publicly read aloud. It is the bidder's responsibility to see that mailed or delivered bids are in the hands of the Owner prior to bid opening.

**Bid Place:** Traill County Courthouse  
Commissioner's Room  
114 West Caledonia, Hillsboro, ND 58045

### **Outline of Project:**

Removal of existing stone step system and replace with new best match stone step system and railing.

**Project Completion:** May 30, 2025

**Type of Bids:** Stipulated Sum for - General Construction, no mechanical or electrical work.

**Obtaining Documents:** Drawings and Specifications may be obtained electronically from Hepper Olson Architect or viewed on the following building exchanges: Bismarck/Mandan Builders Exchange; Construction Plans Exchange; Dickinson Builders Exchange; Fargo-Moorhead Builders Exchange; Minot Builders Exchange; Grand Forks Builders Exchange; Construct Connect; Dodge Data & Analytics;. Contractors are encouraged to register as a plan holder by providing names, address, phone number, and email contact information to [bobbi@hepperolson.com](mailto:bobbi@hepperolson.com)

Qualified Bidders may obtain Drawings and Specifications from the Architect electronically at no charge. Hard copies are available for \$75 which is non-refundable.

North Dakota Law:

- That each bid must be accompanied by a separate envelope containing the contractor's license and bid security. The bid security must be in a sum equal to five percent of the full amount of the bid and must be in the form of a bidder's bond. A bidder's bond must be executed by the bidder as principal and by a surety, conditioned that if the principal's bid is accepted and the contract awarded to the principal, the principal, within ten days after notice of the award, shall execute a contract in accordance with the terms of the bid and the bid bond and any condition of the governing body. A countersignature of a bid bond is not required under this section. If a successful bidder does not execute a contract within the ten days allowed, the bidder's bond must be forfeited to the governing body and the project awarded to the next lowest responsible bidder.
- That a bidder, except a bidder on a municipal, rural, and industrial water supply project using funds provided under Public Law No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], must be licensed for the full amount of the bid as required by section 43-07-12. For projects using funds provided under Public Law

No. 99-294 [100 Stat. 426; 43 U.S.C. 390a], the advertisement must state that, unless a bidder obtains a contractor's license for the full amount of its bid within twenty days after it is determined the bidder is the lowest responsible bidder, the bid must be rejected and the contract awarded to the next lowest responsible bidder.

- That no bid may be read or considered if the bid does not fully comply with the requirements of this section and that any deficient bid submitted must be resealed and returned to the bidder immediately.
- That the governing body reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received.

**The Owner:** The Owner reserves the right to hold all bids for a period of ten days after the date fixed for the opening of bids, and to reject any and all Bids and waive any formalities or irregularities.

**By order of:** Traill County Commission, Les Amb, President

END OF DOCUMENT

## **SECTION 00 20 10 - INSTRUCTION TO BIDDERS**

### **PART 1 GENERAL**

#### 1.1 DOCUMENT INCLUDES

- A. INTENT
- B. CONTRACT TIME.
- C. BID DOCUMENTS AND CONTRACT DOCUMENTS.
  - 1. Definitions.
  - 2. Contract Documents Identification
  - 3. Availability and Examination of Documents
  - 4. Inquiries/Addenda
  - 5. Product/Assembly/System Substitutions
- D. BID SUBMISSION
  - 1. Bidder's representations.
  - 2. Submission procedures.
    - a. Preparation of Bids.
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- E. CONSIDERATION OF BIDS.
  - 1. Opening of Bids.
  - 2. Rejection of Bids.
  - 3. Duration of Offer.
  - 4. Acceptance of bid (award).
- F. POST-BID INFORMATION.
  - 1. Contractor's Qualification Statement.
  - 2. Submittals
  - 3. Performance Bond and Payment Bond
  - 4. Insurance
- G. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR.

#### 1.2 RELATED DOCUMENTS

- A. DOCUMENT 00 10 50 – ADVERTISEMENT FOR CONSTRUCTION BIDS.
- B. DOCUMENT 00 40 00 – BID FORM.
- C. DOCUMENT 00 50 00 – AGREEMENT – AIA Document A101 2017 (modified) and GENERAL CONDITIONS – AIA Document A201 2017 (modified).
- D. DOCUMENT 00 73 00 – SUPPLEMENTARY CONDITIONS

#### 1.3 INTENT

- A. The intent of this Bid request is to obtain an offer to perform work in accordance with the Bid Documents to complete for a **Stipulated Sum for the following Bid Packages:**
  - 1. **Contract for General Work.** There is no electrical or mechanical work.

#### 1.4 CONTRACT TIME

- A. Contract time is indicated on the bid form.

#### 1.5 BID DOCUMENTS AND CONTRACT DOCUMENTS:

- A. DEFINITIONS
  - 1. Bid Documents: include the Bidding Requirements and Contract Documents:
    - a. The Bidding Requirements consist of the Advertisement for Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form and other sample bidding and contract forms.
    - b. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, General Conditions of the Contract, Supplementary Conditions of the Contract, Special Conditions of the Contract, Drawings, Specifications and all Addenda issued prior to execution of the Contract.

2. Definitions set forth in the General Condition of the Contract for Construction, AIA Document A201, or in other contract documents are applicable to the bidding documents.
  3. Addenda: are written or graphic instruments issued by the architect prior to the execution of the contract which modify or interpret the bidding documents by additions, deletion, clarifications or corrections.
  4. A Bid: is a complete and properly executed proposal to do the work for the sums stipulated therein, submitted in accordance with the bidding documents.
  5. The Base Bid: is the sum stated in the bid for which the bidder offers to perform the work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids.
  6. An Alternated Bid (or Alternate): is an amount stated in the bid to be added to or deducted from the amount of the base bid if the corresponding change in the work, as described in the bidding documents, is accepted.
  7. A Unit Price: is an amount stated in the bid as a price per unit of measurement for materials, equipment or services or a portion of the work as described in the bidding documents.
  8. A Bidder: is a person or entity who submits a bid and who meets the requirements set forth in the bidding documents.
  9. A Sub-Bidder: is a person or entity who submits a bid to a bidder for materials, equipment or labor for a portion of the work.
  10. Bid, Offer, or Bidding: Act of submitting an offer under seal.
  11. Bid Amount: Monetary sum identified by the Bidder in the Bid Form.
  12. Installer: is the Contractor or another entity engaged by the Contractor, either as an employee, subcontractor, or contractor of lower tier, to perform a particular construction activity, including installation, erection, application, and similar operations. Installers are required to be experienced in the operations they are engaged to perform.
- B. CONTRACT DOCUMENT IDENTIFICATION:
1. The Documents are identified:
    - PROJECT: **Trail County – Courthouse East Steps Restoration**
    - 114 West Caledonia, Hillsboro, ND 58045
    - architects project number 2024-11
- C. AVAILABILITY AND EXAMINATION OF DOCUMENTS
1. Bidders may obtain complete sets of the bidding documents from the Architect upon a receipt of a NON-refundable deposit of \$50 or free of charge for electronic.
  2. Upon receipt of the Bidding Documents verify documents complete. Notify Architect if documents are incomplete.
  3. Immediately notify Architect upon finding discrepancies or omissions in the Bidding Documents.
  4. Bidders shall use complete sets of bidding documents in preparing bids: neither the owner nor architect assumes responsibility for errors or misinterpretations resulting from the use on incomplete sets of bidding documents.
  5. Bidding Documents are made available only for the purpose of obtaining offers for this Project. Their use does not grant a license for other purposes.
- D. INQUIRIES AND ADDENDA
1. The bidder shall carefully study and compare the bidding documents with each other, and shall examine the site and local conditions, and shall at once report to the architect errors, inconsistencies or ambiguities discovered.
  2. Bidders and sub-bidders requiring clarification or interpretation of the bidding documents shall make a written request which shall reach the architect at least five (5) days prior to the date for receipt of bids.
  3. Interpretations, corrections and changes of the bidding documents will be made by addendum. Interpretations, corrections and changes of the bidding documents made in any other manner will not be binding, and bidders shall not rely upon them. Verbal answers are not binding on any party.
  4. Addenda:



- a. Addenda will be transmitted to all who are known by the issuing office to have received a complete set of bidding documents.
- b. Each bidder and sub-bidders shall ascertain prior to submitting a bid that the bidder has received all addenda issued, and the bidder shall acknowledge their receipt in the bid.
- c. All Addenda become part of the Contract Documents. Include resultant costs in the Bid Price.

E. PRODUCT SUBSTITUTIONS

- 1. The materials, products and equipment described in the bidding documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.
- 2. No substitution will be considered prior to receipt of bids unless written request for approval has been received by the architect at least seven (7) days prior to the date for receipt of bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The architect's decision of approval or disapproval of a proposed substitution shall be final.
- 3. If the architect approves a proposed substitution prior to receipt of bids, such approval will be set forth in an addendum. Bidders shall not rely upon approvals made in any other manner.
- 4. No substitutions will be considered after the contract award unless specifically provide for in the contract documents.

1.6 BID SUBMISSION

A. BIDDER'S REPRESENTATIONS

- 1. The bidder by making a bid represents that:
  - a. The bidder has read and understands the bidding document or contract documents, to the extent that such documentation related to the work for which the bid is submitted, and for other portions of the project, if any, being bid concurrently or presently under construction.
  - b. The bid is made in compliance with the bidding documents.
  - c. The bidder has visited the site, become familiar with local conditions under which the work is to be performed and has correlated the bidder's personal observations with the requirements of the proposed contract documents. A Pre-bid meeting is schedule as indicated in the Invitation to Bid Section 00105.
  - d. The bid is based upon the material, equipment and systems required by the bidding documents without exception.

B. BIDDING PROCEDURES

- 1. Bidders shall be solely responsible for the delivery of their bids in the manner and time prescribed.
- 2. Preparation of bids
  - a. Bids shall be submitted on the forms included in Section 00400 Bid Form of this manual.
  - b. All blanks on the bid for shall be legibly executed in a non-erasable medium.
  - c. Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.
  - d. The submittal shall be submitted as a double envelope with each envelope including the following and labeled as indicated.
    - 1) Bid Form envelop "Large envelope": Closed and sealed insert 2 copies of the **Bid Form** as supplied in Section 00 40 00 Bid Forms. On the outside of this envelope clearly identify:
      - a) Bidder's Name.
      - b) Project Name.

- c) Owner's Name.
- d) Addenda Received.

2) "Small envelope": Attach the small envelope to the large envelope and insert the **Contractor's License and Bid Bond**.

<p>Bidder's Name: Project Name: Owner's Name:</p> <p>Addenda Received:</p> <p>Type of Bid: General -or- Mechanical – or- Electrical - or- Combined</p> <p style="text-align: center;">(1 copy) Bid Form</p> <p style="text-align: center;"><i>Large Envelope</i></p>
--

<p>Contractor's License &amp; Bid Bond</p> <p><i>Small Envelope</i></p>
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- e. Improperly completed information, irregularities in bid bond, shall be cause not to open the Bid Form envelope and declare the bid invalid or informal. Owner will reject and return un-open Bid Form envelope.
  - f. Interlineations, alterations and erasures must be initialed by the signer of the bid.
  - g. All requests alternates shall be bid. If no change in the base bid is required, enter "No Change".
3. Projects located in North Dakota
- a. Only firms holding a North Dakota State Contractor's License of proper classification will be eligible to submit bids over \$500.00. Licenses are obtained through the Office of the Secretary of State, Bismarck, North Dakota. According to the requirements of the law, no license may be issued to an applicant until the expiration of ten days after filing of the application. A Contractor must be the holder of such license at least ten days prior to date set to receive bids, to become a qualified bidder, and it must be renewed for the current year. Sub-contractors shall meet the requirements of Section 43.07 of the North Dakota Century Code.
  - b. If there is North Dakota local or state tax money in the project, the bid security and a copy of the Contractor's License or Certificate of License Renewal issued by the Secretary of State (whichever is most recent) shall be in a separate envelope fastened to the envelope containing the bid. All copies of the Bid, the bid security on any other projects, and any other documents required to be submitted with the Bid shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED FOR PRIME CONTRACT" on the face thereof. Oral, telephonic or telegraphic Bids are invalid and will not receive consideration.
  - c. Bids may be hand carried to the place of bid opening just before the opening, or they may be delivered in advance of that time to the address under "Owner" in the Invitation to Bid.
  - d. Each Contractor shall include in his bid the paying of all North Dakota sales taxes, use taxes, gasoline taxes, and vehicle license fees applicable to this work. Either the Contractor or his suppliers shall pay the Sales or Use Tax on materials used.

- e. The Contractor must submit from the State Tax Commissioner a certificate of income tax clearance before the Owner can enter into a contract. Before the Contractor enters into contract with a sub-contractor, he shall obtain from him/her such a certificate.
  - f. Modification of the bid by telegram, telephone, or facsimile is not legal.
4. Bid Security
- a. Bids shall be accompanied by a security deposit as follows:
    - 1) Bid Bond Sum in the amount as designated in the Invitation to Bid on AIA A310 Bid Bond Form or on a standard surety company form.
  - b. Endorse the Bid Bond in the name of the Owner as obligee, signed and sealed by the principal Contractor and surety.
  - c. The security deposit will be returned after delivery to the Owner of the required Performance and Payment Bond(s) by the accepted Bidder.
  - d. After a bid has been accepted, all securities will be returned to the respective Bidders.
  - e. If no contract is awarded, all security deposits will be returned.
5. Modification or withdrawal of bid
- a. A bid may not be modified, withdrawn or canceled by the bidder during the stipulated time period following the time and date designated for the receipt of bids, and each bidder so agrees in submitting a bid.
  - b. Prior to the time and date designated for receipt of bids, a bid submitted may be modified or withdrawn at the place designated for receipt of bids. A change shall be so worded as not to reveal the amount of the original bid.
  - c. Oral, telephonic, telegraphic, facsimile or other electronically transmitted modifications will not be considered.
  - d. Withdrawn bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.
6. Bid Ineligibility
- a. Bids that are unsigned, improperly signed or sealed, conditional, illegible, obscure, contain arithmetical errors, erasures, alterations, or irregularities of any kind, may at the discretion of the Owner, be declared unacceptable.
  - b. Bid Forms, Appendices, and enclosures which are improperly prepared may at the discretion of the Owner, be declared unacceptable.

## 1.7 CONSIDERATION OF BIDS

### A. OPENING OF BIDS

- 1. Properly identified bids received on time will be publicly opened and will be read aloud. Bidder may be present. An abstract of the bids may be made available to bidders.

### B. REJECTION OF BIDS

- 1. The owner shall have the right to reject any or all bids.
- 2. A bid not accompanied by a required bid security or by other data required by the bidding documents, or a bid which is in any way incomplete or irregular is subject to rejection.

### C. DURATION OF OFFER

- 1. Bids shall remain open to acceptance for a period of Thirty (30) days after the bid closing date.

### D. ACCEPTANCE OF BID (AWARD)

- 1. It is the intent of the owner to award a contract to the lowest responsible and qualified bidder provided the bid has been submitted in accordance with the requirements of the bidding documents and does not exceed the funds available. The owner shall have the right to waive informalities and irregularity in a bid received and to accept the bid which, in the owner's judgment, is in the owner's own best interests.

2. The owner shall have the right to accept alternates in any order or combination to determine the low bidder on the basis of the sum of the base bid and alternates accepted.
3. The Owner reserves the right to accept or reject any or all offers.
4. After acceptance by the Owner, the Architect on behalf of the Owner will issue to the successful Bidder, a written Intent of Award.

#### 1.8 POST-BID INFORMATION

The successful Bidder will be requested to submit the following within 7 days after Intent of Award.

##### A. QUALIFICATIONS

1. Contractor's qualification statement: Bidders to whom Intent of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement.
2. Subcontractors: Include the names of all Subcontractors and the portions of the Work they will perform.
  - a. The Owner reserves the right to reject a proposed Subcontractor for reasonable cause.
  - b. Refer to AIA Article 5 of General Conditions.
3. Each Contractor to submit State Tax Clearance and Worker's Compensation.

##### B. SUBMITTALS

1. The bidder shall, as soon as practicable or as stipulated in the bidding documents, after notification of selection for the award of a contract, furnish to the owner through the architect in writing:
  - a. A designation of the work to be performed with the bidders' own forces;
  - b. Names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the work; and
  - c. Names of persons or entities (including those who are to furnish materials of equipment fabricated to a special design) proposed for the principal portions of the work.
2. The bidder will be required to establish to the satisfaction of the architect and owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the bidding documents.
3. Prior to the execution of the contract, the architect will notify in writing if either the owner or architect, after due investigation, has reasonable objection to a person or entity proposed by the bidder. If the owner or architect has reasonable objection to a proposed person or entity, the bidder may, at the bidder's option, (1) withdraw the bid or (2) submit and acceptable substitute person or entity with an adjustment in the base bid or alternated bid to cover the difference in cost occasioned by such substitution. The owner may accept the adjusted bid price or disqualify the bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.
4. Persons and entities proposed by the bidder and to whom the owner and architect have made no reasonable objection must be used on the work for which they were proposed and shall not be changed except with the written consent of the owner and architect.

##### C. PERFORMANCE BOND AND PAYMENT BOND

1. Accepted Bidder: Provide a Performance and Payment Bond on AIA Form A312 or as approved by the Owner.
2. The Contractor shall furnish and pay for such bonds covering the faithful performance of the Contract and the payment of all obligations arising hereunder. The Contract will not be signed until the Owner has received the proper bonds specified under this article, issued by a bonding company licensed to do business in the State of North Dakota, in the amount of 100% of the Contract Sum.
3. The Bonds shall be written on a form furnished by the Bonding Agent or Company and acceptable by the Owner.
4. The Bidder 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.

5. The Bonds shall remain current during the course of the Construction of the Work under this Contract and modified by Add-on Change-Orders.
6. Time of Delivery and Form of Bonds:
  - a. The Bidder shall deliver the required bonds to the Owner before execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance to this Subparagraph.
  - b. The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

**D. INSURANCE**

1. The successful bidder will be required to provide a Certificate of Insurance to the Owner that includes the following coverage.
  - a. **CONTRACTOR'S LIABILITY INSURANCE.** The Contractor shall purchase and maintain such insurance as protection from all claims set forth below, which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor alone, or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:
    - 1) Claims under Worker's Compensation, disability benefit and other similar employee benefit acts;
    - 2) Claims for damages because of bodily injury, occupational sickness or disease, or death of employees, and claims insured by usual personal injury liability coverage.
    - 3) Claims for damages because of bodily injury, sickness, or disease, or death of any person other than employees, and claims insured by usual personal injury liability coverage; and
    - 4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.
  - b. **AMOUNTS OF INSURANCE PROVIDED:**
    - 1) Commercial General Liability, including premises or operations, contractual, and products or completed operations coverage (if applicable) with minimum liability limits of Two million Dollars and Zero Cents (\$2,000,000) per occurrence .
    - 2) Automobile Liability including Owned (if any), Hired, and Non-owned automobiles, with minimum liability limits of Five Hundred Thousand Dollars and Zero Cents(\$ 500,000 ) per person and Two Million Dollars and Zero Cents (\$2,000,000) per occurrence .
    - 3) Workers' Compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract.
    - 4) Employers' Liability or "stop gap" insurance of not less than Two Million Dollars and Zero Cents (\$2,000,000) as an endorsement on the workers' compensation or commercial general liability insurance .
  - c. The General Contractor to provide a copy of the Builder's Risk to the Owner, for project bid amount.

**END OF SECTION**

**BLANK SHEET**

**Section 00 40 00 - Bid Form - Stipulated Sum**

**To:** Traill County, 114 West Caledonia, Hillsboro, ND 58045

**Project:** **TRAILL COUNTY COURTHOUSE – EAST STEPS RESTORATION**  
114 West Caledonia, Hillsboro, ND 58045  
Architect’s Project Number: 2024-11

**Date:** Wednesday, August 4, 2021 at 2:00 p.m. CDST  
**Bid Place:** Traill County Courthouse  
Commissioner’s Room  
114 West Caledonia, Hillsboro, ND 58045

Submitted by:.....  
(full name)  
(full address) .....  
.....

**1.1 OFFER**

- A. Having examined the Place of the Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by the Architect for the above-referenced Project, we, the undersigned, hereby offer to enter into a Contract to perform the Work (includes all labor, materials, equipment and services required to perform the Work) for the Stipulated sum listed in lawful money of the United States of America.
- B. We have included the Bid security as required by the Instructions to Bidders.
- C. All applicable federal, state and city taxes are included in the Stipulated Sums.

**BASE BID**

\$..... Dollars  
(words)  
  
\$.....  
(numbers)

**1.2 CONTRACT TIME**

- A. If this Bid is accepted, we (the General Contractor) will:
  - 1. Substantial Completion by May 30, 2025**
  - 2. Final Completion by June 15, 2025**

**1.3 ACCEPTANCE**

- A. This offer shall be open to acceptance and is irrevocable for 30 days from the Bid closing date.
- B. If this Bid is accepted by the Owner within the time period stated above, we will:
  - 1. Execute the Agreement within **thirty (30)** days of receipt of Notice of Award.
  - 2. Furnish the required bonds within **thirty (30)** days of receipt of Notice of Award.
  - 3. Commence Work within ten (10) days after written Notice to Proceed.
- C. If this Bid is accepted within the indicated time, and we fail to commence the Work the Bid security shall be forfeited as damages to the Owner by reason of our failure, limited in amount to the lesser of the face value of the Bid security or the difference between this Bid and the Bid upon which Contract is signed.
- D. In the event our Bid is not accepted within the time stated above, the required Bid security will be returned to the undersigned, according to the provisions of the Instructions to Bidders, unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

1.4 ADDENDA

A. Following Addenda have been received, and the modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

1. Addendum No....., dated .....
2. Addendum No....., dated .....

1.5 APPENDICES

A. Following documents are attached (in sealed separate envelop) to and made a condition of opening and reading allow the Bid:

1. Bid security
2. Current ND Contractor's License.

1.6 BID FORM SIGNATURES

The Corporate Seal of

.....  
(Bidder - print the full name of your firm)

was hereunto affixed in the presence of:

.....  
(Authorized signing officer / Title)

If the Bid is a joint venture or partnership, add additional forms of execution for each member of the joint venture in the appropriate form or forms as above.

**END OF DOCUMENT**



## **DOCUMENT 00 50 00 - AGREEMENT AND GENERAL CONDITIONS – AIA**

- A. AGREEMENT
  - 1. AIA Document A101-2017, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment is a Stipulated Sum, AS MODIFIED PER DOCUMENT 00 73 00 Supplementary Instructions forms the basis of Agreement between the Owner and Contractor.
  - 2. AIA Document A101-2017 Exhibit A, Insurance and Bonds
  
- B. GENERAL CONDITIONS
  - 1. AIA Document A201-2017, General Conditions of the Contract for Construction, AS MODIFIED PER DOCUMENT 00 73 00 Supplementary Instructions, is the General Conditions of the Contract.
  - 2. PERFORMANCE AND PAYMENT BONDS
  
- C. AGREEMENT FOR STORING MATERIALS OFF-SITE

END OF DOCUMENT

**BLANK SHEET**

# AIA<sup>®</sup> Document A101<sup>®</sup> – 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  
*(In words, indicate day, month and year.)*

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

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

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

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

Hepper Olson Architects, Ltd  
429 Broadway St.  
PO Box 147  
Buxton, ND 58218  
Telephone Number: 701-841-1000

The Owner and Contractor agree as follows.

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.

Init.

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User Notes:

(1481794870)

## TABLE OF ARTICLES

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

## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

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.)

Init.

[ ] 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
-----------------	-----------------------------

§ 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.

#### 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
------	-------

§ 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.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

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

Item	Price
------	-------

#### § 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

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

#### § 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

#### § 4.6 Other:

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

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

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

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule 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.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, 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, 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 determines, in the Architect's 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 Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .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 may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; 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.)*

Init.

§ 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.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 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 AIA Document A201–2017.

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

## § 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

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

## § 5.3 Interest

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

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

%

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect 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.

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

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(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 AIA Document A201–2017.

**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:

*(Name, address, email address, and other information)*

**§ 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, and elsewhere in the Contract Documents.

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

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, 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:

**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
- .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
--------	-------	------

.6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

.7 Addenda, if any:

Number	Date	Pages
--------	------	-------

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:

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

Init.

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

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

Supplementary and other Conditions of the Contract:

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

.9 Other documents, if any, listed below:

*(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.

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

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

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

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

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User Notes:

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# AIA<sup>®</sup> Document A101<sup>®</sup> – 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  
*(In words, indicate day, month and year.)*

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

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

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

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<sup>®</sup>–2017, General Conditions of the Contract for Construction. Article 11 of A201<sup>®</sup>–2017 contains additional insurance provisions.

### **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 Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>™</sup>–2017, General Conditions of the Contract for Construction.

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

##### **§ A.2.1 General**

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### **§ A.2.2 Liability Insurance**

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

Init.

**§ A.2.3 Required Property Insurance**

**§ A.2.3.1** 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 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.2.3.1.1 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. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Causes of Loss	Sub-Limit
----------------	-----------

**§ A.2.3.1.2 Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit
----------	-----------

**§ A.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the 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.2.3.1.4 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.2.3.2 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.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

Init.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- § A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- § A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach,

Init.



including costs of investigating a potential or actual breach of confidential or private information.  
(Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] **§ A.2.5.2 Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
----------	--------

**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 as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ 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 Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's 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, unless a different duration is stated below:

*(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 (\$ ) each occurrence, (\$ ) general aggregate, and (\$ ) 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.

Init.

§ 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 (\$) 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 (\$) each accident, (\$) each employee, and (\$) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

**§ 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, unless a different duration is stated below:

*(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. 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.

§ 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

Init.



**§ 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	
Performance Bond	

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.

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

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

**BLANK SHEET**

# AIA<sup>®</sup> Document A201<sup>®</sup> – 2017

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

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

THE OWNER:  
(Name, legal status and address)

THE ARCHITECT:  
(Name, legal status and address)

Hepper Olson Architects, Ltd  
429 Broadway St.  
PO Box 147  
Buxton, ND 58218

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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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

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

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

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

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

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

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

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

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

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

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

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

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



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

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

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

### § 3.3 Supervision and Construction Procedures

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

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

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

### § 3.4 Labor and Materials

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

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



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

### § 3.5 Warranty

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

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

### § 3.6 Taxes

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

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

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

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

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

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

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

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

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will



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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

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

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

### § 3.18 Indemnification

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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



## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

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

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

### § 5.3 Subcontractual Relations

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

### § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

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

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

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

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

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

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

### **§ 6.2 Mutual Responsibility**

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

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

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

#### § 9.4 Certificates for Payment

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

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

#### § 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

Init.



- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

#### § 9.6 Progress Payments

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

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

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

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

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

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

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

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

### § 9.7 Failure of Payment

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

### § 9.8 Substantial Completion

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

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

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

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

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

### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

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

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

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

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

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

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

### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

#### § 10.1 Safety Precautions and Programs

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

#### § 10.2 Safety of Persons and Property

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



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

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

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

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

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

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

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

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

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

**§ 10.3 Hazardous Materials and Substances**

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will



promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

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

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

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

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or

expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

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

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

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

## **§ 11.3 Waivers of Subrogation**

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

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

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

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

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

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

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

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

#### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

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

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

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

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



that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

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

**§ 12.3 Acceptance of Nonconforming Work**

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

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 Governing Law**

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

**§ 13.2 Successors and Assigns**

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

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

**§ 13.3 Rights and Remedies**

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

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

## § 13.4 Tests and Inspections

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

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

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

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

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

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

## § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

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

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

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

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

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

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

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

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

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

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

- .1 cease operations as directed by the Owner in the notice;

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

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

#### § 15.1.3 Notice of Claims

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

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

#### § 15.1.4 Continuing Contract Performance

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

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

#### § 15.1.5 Claims for Additional Cost

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

#### § 15.1.6 Claims for Additional Time

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



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

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

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

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

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

#### § 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

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

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

**§ 15.4.4 Consolidation or Joinder**

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

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

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



# AIA® Document A312™ – 2010

## Payment Bond

**CONTRACTOR:**

(Name, legal status and address)

**SURETY:**

(Name, legal status and principal place of business)

**OWNER:**

(Name, legal status and address)

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

**CONSTRUCTION CONTRACT**

Date:

Amount: \$ 0.00

Description:

(Name and location)

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

**BOND**

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond:  None  See Section 18

**CONTRACTOR AS PRINCIPAL**

Company: (Corporate Seal)

**SURETY**

Company: (Corporate Seal)

Signature: \_\_\_\_\_

Name and

Title:

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

Signature: \_\_\_\_\_

Name and

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

Init.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Init.

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

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

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

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

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

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

#### § 16 Definitions

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

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

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

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



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

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

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

§ 18 Modifications to this bond are as follows:

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_  
*(Corporate Seal)*

Company: \_\_\_\_\_  
*(Corporate Seal)*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

 **AIA**® Document A312™ – 2010

**Performance Bond**

**CONTRACTOR:**

*(Name, legal status and address)*

**SURETY:**

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

**OWNER:**

*(Name, legal status and address)*

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

**CONSTRUCTION CONTRACT**

Date:

Amount: \$ 0.00

Description:

*(Name and location)*

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

**BOND**

Date:

*(Not earlier than Construction Contract Date)*

Amount: \$

Modifications to this Bond:  None  See Section 16

**CONTRACTOR AS PRINCIPAL**

Company: *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and

Title:

**SURETY**

Company: *(Corporate Seal)*

Signature: \_\_\_\_\_

Name and

Title:

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

*(FOR INFORMATION ONLY — Name, address and telephone)*

**AGENT or BROKER:**

**OWNER'S REPRESENTATIVE:**

*(Architect, Engineer or other party:)*



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

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

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

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

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

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

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

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

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

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

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

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

Init.

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

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

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

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

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

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

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

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

#### § 14 Definitions

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

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

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

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ *(Corporate Seal)*

Company: \_\_\_\_\_ *(Corporate Seal)*

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

# AGREEMENT FOR STORING MATERIALS OFF-SITE

This supplemental agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between the  
\_\_\_\_\_  
(hereinafter called "the Owner") and  
\_\_\_\_\_  
(hereinafter called "the Contractor")  
for \_\_\_\_\_  
\_\_\_\_\_

WHEREAS, the Contractor desires to store certain materials off the site for use in construction of  
\_\_\_\_\_

under contract dated \_\_\_\_\_ in order to furnish better storage, and desires to  
obtain advances for materials properly stored on the premises of \_\_\_\_\_  
\_\_\_\_\_

to the Contractor in accordance with contract provisions as if they were properly stored on the site, provided the following conditions are complied with:

- 1) The above described warehouse selected for off-site storage must be suitable for storage and satisfactory to the Owner;
- 2) Any extra expense incurred because of off-site storage shall be borne by the Contractor;
- 3) Storage shall be at the risk of the Contractor and the loss, damage, or destruction of any materials so stored does not relieve the Contractor of the duty to complete the contract and the Contractor shall, if necessary, replace such items at his own expense;
- 4) The Owner will advance to the Contractor 90% of the invoice value of the materials thus stored;
- 5) Payments for materials stored off the site will be made only on regular Periodical Estimates at the prescribed monthly intervals the same as for materials stored on the site;
- 6) All materials stored shall be adequately covered by insurance, and;
- 7) The consent of Surety shall be obtained and evidenced by signature hereto.

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

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

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

COUNTERSIGNED BY:  
\_\_\_\_\_  
Resident Agent

**BLANK SHEET**

## **SECTION 00 73 00 - SUPPLEMENTARY CONDITIONS**

### **PART 1 GENERAL**

#### **1.01 SUMMARY**

- A. These Supplementary Conditions amend and supplement the General Conditions defined in Document 00 50 00 - General Conditions and other provisions of the Contract Documents as indicated below. Provisions that are not so amended or supplemented remain in full force and effect.
- B. The terms used in these Supplementary Conditions that are defined in the General Conditions have the meanings assigned to them in the General Conditions.

#### **1.02 RELATED SECTIONS**

- A. Section 00 50 00 - Agreement Form, General Conditions, and Performance & Payment Bonds.

#### **1.03 MODIFICATIONS TO THE GENERAL CONDITIONS**

### **ARTICLE 1 - GENERAL PROVISIONS**

#### **1.1 BASIC DEFINITIONS**

Add the following:

- 1.1.3.1 The term "provide" shall mean furnish and install in place.
- 1.1.5.1 The general character and scope of the Work is shown by the Drawings. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work.
- 1.1.5.2 Figured dimensions on the Drawings shall be followed in preference to scaled measurements on the Drawings.
- 1.1.6.1 Where Specifications are abbreviated type, they indicate complete sentences in the same manner as when a note occurs in the Drawings. Omissions of words such as "the Contractor shall" and "as shown on the Drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference.
- 1.1.6.2 Where a number is listed in the Specifications (as for gauges, weights, temperatures, amounts of time, etc.), the number shall be interpreted as that or better.

#### **1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

Add the following:

- 1.2.4 In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided.
- 1.2.5 As experienced Contractors and Subcontractors, it is assumed each Contractor and Subcontractor understands not all components may be shown on the Drawings including, but not limited to, fasteners, connectors and incidental supports. This shall not relieve the Contractors or Subcontractors from providing all materials, equipment, fasteners, and incidental components as required or a complete installation in accordance with the design intent.

### **ARTICLE 3 - CONTRACTOR**

#### **3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

Modify the original paragraph as follows:

- 3.2.1 At the end of the sentence add "and geotechnical report, if any".

#### **3.4 LABOR AND MATERIALS**

Add the following:



- 3.4.2.1 After the Contract has been executed, the Owner and Architect may consider requests for the substitution of products in place of those specified. The Owner and Architect may, but are not obligated to, consider only those substitution requests that are in full conformance with the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions, the Contractor:
- .1 represents that it has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;
  - .2 represents that it will provide the same warranty for the substitution as it would have provided for the product specified;
  - .3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be performed or changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent;
  - .4 agrees that it shall, if the substitution is approved, coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects; and
  - .5 represents that the request includes a written representation identifying any potential effect the substitution may have on the Project's achievement of a Sustainable Measure or the Sustainable Objective.
- 3.4.4 No trade shall commence Work until conditions are satisfactory for carrying out the Work properly, and surfaces to be covered are suitable.
- 3.4.5 Manufacturer's printed instructions covering details of installation shall be followed where not in conflict with these Specifications. If there is a conflict, notify the Architect and obtain Architect's approval before proceeding.
- 3.4.6 Completed Work shall be left plumb, level, true to line or plane, anchored securely in place, and free from damage.
- 3.4.7 Unless otherwise called for, all pieces of material shall be as large a stock size as is in conformity with standard good practice of the trade.
- 3.4.8 Except where in conflict with the Specifications, current manufacturer's printed instructions of herein specified proprietary products are made part of the Specifications.
- 3.4.9 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.
- 3.4.10 The Contractor shall provide all incidental materials and components including, but not limited to, fasteners, connectors, incidental supports and other components of construction as required for complete installation in accordance with the design intent.

### **3.5. WARRANTY**

Add the following:

- 3.5.1.1 The Contractor further warrants that all products, materials and equipment provided under the Contract are [asbestos-free] [zero percent Asbestos containing] as defined under current EPA Guidelines, and that they do not contain any other materials currently known to be hazardous.

Add the following:

- 3.5.3 The Contractor shall guarantee and maintain the stability of all work and materials and keep same in reasonable repair and condition for the period of one (1) year from the date of final acceptance of the Work but with respect to any part of the Work which the Owner takes possession of prior to final acceptance, the guarantee shall continue for a period of one year from the date the Owner takes possession. This is in addition to any manufacturer's warranty specified.
- 3.5.4 Defects of any kind, due to faulty work or materials appearing during the above-mentioned period must be promptly made good by the Contractor at his own expense to the entire satisfaction of the Owner and Architect. Any such construction and repairs shall include the costs of all damages to the finish or furnishings of the building resulting

from the original defect or repairs to the building. Where equipment is required to be replaced, the one-year warranty shall be reinstated for that piece of equipment from the date of replacement.

- 3.5.5 The guarantee, as provided in paragraph 3.5.4, does not apply to injuries or damages occurring after final acceptance due to "acts of God," fire, violence, abuse, or carelessness of other Contractors or agents of the Owner; however, the Owner reserves the right to make temporary repairs as necessary to keep equipment in operating condition without voiding the Contractor's guarantee nor relieving the Contractor of the Contractor's responsibilities during the guarantee period.
- 3.5.6 The guarantee, as provided in paragraph 3.5.4, shall be extended if other guarantees for different lengths of time are specifically called for in the Contract Documents or if manufacturer's standard warranties extend for a longer period.

### **3.7 PERMITS, FEES AND NOTICES**

Add the following:

- 3.7.2.1 When the Contract Documents require Work better than that required by statute, the Contract Documents shall govern.

Modify the original paragraph as follows:

- 3.9.3 Replace second sentence with: The Contractor shall not change the superintendent during the progress of the project without the Owner's and Architect's written consent, which shall not unreasonably be withheld or delayed.

### **3.10 CONTRACTOR'S CONSTRUCTION AND SUBMITTAL SCHEDULES**

Add the following:

- 3.10.1 Submit in accordance with Section 01 33 00.

### **3.11 DOCUMENTS AND SAMPLES AT THE SITE**

Replace the original paragraph in its entirety with:

- 3.11 See Division 01, of the Project Manual.

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

Add the following:

- 3.12.6.1 If the Contractor or any Subcontractor uses a material, product or piece of equipment which requires modification(s) to any other portion of the Work, including mechanical and electrical Work, the Contractor or Subcontractor using that material, product or piece of equipment shall be responsible for coordinating all required modifications and shall bear the full cost of such modifications.

### **3.15 CLEANING UP**

Add the following:

- 3.15.1.1 The Contractor and Subcontractors shall clean all portions of the Work in accordance with Section 01 74 00 and as indicated on any punch lists. Final payment shall not be made until all cleaning has been accepted by the Architect.

## **ARTICLE 4 - ARCHITECT**

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

Modify the original paragraph:

- 4.2.3 Add sentence at end: The Architect will not be responsible for the acts or omissions of the Owner.

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

No supplement.

## ARTICLE 5 - SUBCONTRACTORS

### 5.1 DEFINITIONS

Add the following:

5.1.3 All Subcontractors are bound to the terms of the General and Supplementary Conditions.

## ARTICLE 7 - CHANGES IN THE WORK

Add the following:

7.1.4 All proposals shall, at a minimum, include detailed breakdown and indicate the terms enumerated below. Item (a) constitutes the cost of labor, and items (a), (b), and (c) constitute the basic costs referred to under this Article 7.

- (a) Labor costs, itemized by each trade involved, showing the hourly rates for each, and the hours required for the change. Labor rates shall be the same for extra and credit computations and shall be the actual rate paid the workmen, plus contractor's burden on labor, which shall be only the actual costs of fringe benefits, taxes on labor, worker's or workmen's compensation, insurance on labor as affected by payroll, unemployment taxes and insurance, including FICA and FUTA.
- (b) Quantities of materials, equipment and supplies, at their actual cost, with unit costs indicated, plus applicable sales tax.
- (c) The cost of subcontracted work, computed in the same way as provided for under this subparagraph.
- (d) Overhead, profit or commission added after the above computations are complete. Such overhead, profit or commission shall be computed in accordance with the provisions of subparagraph 7.1.5.

7.1.5 Maximum allowances for Subcontractor's/Contractor's overhead and profit shall be as follows, expressed as a percentage of the basic cost of the change:

For Subcontractors: a. 15% of the net cost of the additional Work.

For Contractor: b. 5% of the net cost of the additional Work performed by Subcontractors.  
c. 15% of the net cost of the work performed by Contractor's own forces.

Add 5% to a and c for all changes of less than \$500.00,  
deduct 5% from a and c for all changes over \$10,000.00.

Overhead and profit shall include all bond premiums (if applicable), and will not be allowed on labor costs if overhead and profit is already included in hourly billing rate.

7.1.6 For proposed changes in the Work on the lump sum or time and material methods, the costs shall be determined as provided in this subparagraph. The Contractor shall submit an itemized list of quantities with the applicable unit costs and extended price for each, in such form and detail as required by the Architect.

### 7.2 CHANGE ORDERS

Add the following:

7.2.2 Neither the Owner nor the Architect are responsible to give Notice of Change Orders to the surety.

### 7.3 CONSTRUCTION CHANGE DIRECTIVES

Modify the original paragraph:

7.3.2 At the end of the sentence Add "or as deemed necessary by the Architect".

7.3.4 At the end of the first sentence replace "...a reasonable allowance for overhead and profit." with "...allowances for overhead and profit as indicated in 7.1.5."

## ARTICLE 8 – TIME

### 8.1 DEFINITIONS

Add the following:

- 8.1.3.1 Minor corrective Work and the replacement of defective Work or materials, and the adjustment of control apparatus, will not delay the determination that the Contract is Substantially Complete.
- 8.1.3.2 The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10.2.

### 8.2 PROGRESS AND COMPLETION

Add the following:

- 8.2.1.1 The Date of Substantial Completion and the Date of Final Completion are as specified in Section 01 10 00 Summary. If the Work is not Substantially Complete on or before the date specified or other date as granted by Change Order, the Contractor shall pay to the Owner as liquidated damages the sum of \$ 50 for each calendar day of delay. If the Work has not achieved Final Completion by the date specified or other date as granted by Change Order, the Contractor shall pay to the Owner as liquidated damages the sum of \$50 for each calendar day of delay. Any monies due to the Owner as liquidated damages will be deducted from any monies due or to become due to the Contractor under the Contract, or will be collected from the Contractor's surety. These sums are not to be construed in any sense as a penalty”.

### 8.3 DELAYS AND EXTENSIONS OF TIME

Add the following:

- 8.3.1.1 The following will not be considered justifications for extension of time unless due to one of the causes stated within this Article 8:
  - (a) Delay caused by Subcontractors or Supplier except if the Supplier goes out of business and another Supplier cannot be found in time to meet the schedule.
  - (b) Shortage of workmen.
- 8.3.1.2 Change Orders for extension of Contract Time shall be considered only under the following conditions or circumstances:
  - .1 As indicated in Paragraph 8.3.1. The burden of proof to substantiate the extension of time shall rest with the Contractor, including evidence that the cause was beyond his control. The Contractor shall be deemed to have had control of the supply of labor (except in the case of organized labor disputes), materials, equipment, methods, and techniques, and of the Subcontractors.
  - .2 A delay in the progress of the Work actually occurred as a result of one of the valid causes for time extension.
  - .3 Unusual delay in delivery solely due to a delay in transportation. An extension of time shall not be considered when delay in delivery is due to improperly scheduled delivery, or when an order has not been promptly and properly placed.
  - .4 Abnormal weather conditions. The Contractor shall consider the location of the Project, and shall recognize the existence of variations from average climatic conditions. Foul weather in and of itself shall not be a valid cause for a time extension. Time extensions resulting from abnormal weather shall not be considered unless a significant deviation from average seasonal climatic conditions occurred for an extended period of time, and the progress of the Work was delayed to a significant extent. The climatic conditions before and after the period for which the delay is sought shall be evaluated.
  - .5 Changes in the Work which significantly affect the progress of the Work. When the anticipated delay can be determined the extension will be made when the Change in Work is authorized by the Owner. When the anticipated delay cannot be determined, the Contractor shall estimate the additional time required, and a

mechanism for all parties to determine the allowable delay. In such a case, the Architect will determine the time extension and the Contract Time adjusted accordingly by Change Order. For changes in the Work which affect only a portion or Phase of the entire project, the Owner reserves the right to grant a time extension only for that portion or Phase affected by the Change.

- .6 Labor disputes except for lockouts over which the Contractor has control. The amount of time extension shall not be longer than the actual dispute period plus a reasonable time for mobilization, and such extension may be less than the actual dispute period depending on the effect the dispute had upon the progress of the Work.
  - .7 Unavoidable delays such as damage caused by severe weather, fire or other casualty to the Work; remediation of contaminants, pollutants, or hazardous materials or substances discovered after award of the Contract; litigation including without limitation bankruptcy proceedings; the acts of any federal, state or local government unit that directly result in delays; and other delays outside the control of the Party claiming the delay.
  - .8 Delays caused by Subcontractors shall be considered only under the conditions noted above.
- 8.3.1.3 Time extensions shall not be granted as a result of delays caused by improper scheduling, or by failure of the Contractor to have Shop Drawings or other required submittals submitted in sufficient time for review.

## **ARTICLE 9 - PAYMENTS AND COMPLETION**

### **9.1 CONTRACT SUM**

Modify the original paragraph:

- 9.1.2 Add sentence at end: "The costs for overhead, profit and commission shall be determined in accordance with the provisions of subparagraph 7.1.5."

### **9.3 APPLICATIONS FOR PAYMENT**

- 9.3.2 Add: Agreement form included herein and the requirements therein specified shall be submitted and complied with for Contractor to receive payment for materials or equipment stored off-site.
- 9.3.4 Progress payments shall be made monthly upon application, in the amount of 90% of the Work completed and materials described under 9.3.2. For a Contract of over \$100 thousand, the Architect may authorize the payment of 100% of the amount completed after a total of 5% of the Contract amount has been retained, providing progress on the Work is in accordance with or ahead of the Contractor's construction schedule and is satisfactory to the Architect and if the Contractor has filed a Consent of Surety with the Architect.

### **9.8 SUBSTANTIAL COMPLETION**

Add the following:

- 9.8.1 Minor corrective Work, the replacement of defective Work or materials, and the adjustment of control apparatus will not delay the determination of Substantial Completion.
- 9.8.2 Minor punch list items that do not interfere with using the Work as intended may be corrected between Substantial Completion and Final Completion.

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

Modify the original paragraph as follows:

- 9.10.2 After "...or Subcontractor warranties," DELETE "and (6)" and REPLACE WITH ",(6) written certification from Contractor in accordance with Final Inspection requirements of

[Section 01 77 00], (7) all Contract Closeout submittals required by [Section 01 78 00], each submittal having been approved by the Architect, and (8)".

## **ARTICLE 10 - PROTECTION OF PERSONS & PROPERTY**

### **10.3 HAZARDOUS MATERIALS**

Modify the original paragraph as follows:

10.3.1 In the second sentence add "lead-containing materials" after "asbestos".

## **ARTICLE 11 - INSURANCE AND BONDS**

### **11.1 CONTRACTOR'S INSURANCE AND BONDS**

Modify the original paragraph as follows:

- 11.1.1 Modify the third sentence by adding "the State of North Dakota including its agencies and officers," after "The Owner," and by deleting "policy" and replacing it with "and automobile liability policies".
- 11.1.2 Replace the first sentence with: The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required in the Agreement or elsewhere in the Contract Documents, covering the faithful performance of the Contract and the payments of all obligations arising thereunder.
- 11.1.3 Replace paragraph with: The Contract will not be executed by the Owner until the Owner has received, from the Contractor, the properly executed surety bonds specified in AIA A101-2017 Exhibit A Insurance and Bonds.

### **11.5 ADJUSTMENT AND SETTLEMENT OF INSURED LOSS**

Modify the original paragraph as follows:

- 11.5.1 Replace the text with: A loss insured under the property insurance required by the agreement shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.5.2. The Contractor shall pay their subcontractors and Owner their just shares of insurance proceeds received by the Contractor and Owner shall make payments to the Architect and their consultants in similar manner.
- 11.5.2 Replace the text with: Prior to settlement of an insured loss, the Contractor shall notify the Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Owner shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Owner does not object, the Contractor shall settle the loss and the Owner shall be bound by the settlement and allocation. Upon receipt, the Contractor 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 Owner timely objects to either the terms of the proposed settlement or the allocation of proceeds, the Contractor 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**

No supplement.



## **ARTICLE 13 - MISCELLANEOUS PROVISIONS**

### **13.6 TAX CLEARANCE**

Add the following:

- 13.6.1 The Contract will not be signed by the Owner until the Contractor has obtained an income tax clearance, and Workmen's Compensation certificate from the North Dakota State Tax Department and submitted it with the Contract and other supporting documents to the Owner. Certificates must be current and must not have expired as of the date of the contracts are submitted for approval.

### **13.7 SAFETY PROGRAMS**

Add the following:

- 13.7.1 For all projects exceeding \$100,000, the [Contractor] [Contractors] shall submit to the Owner a copy of the written safety program to be used as guidelines and direction of the subcontractors worksite activities.
- 13.7.2 It shall be a condition of the Contract, and shall be made a condition of each Subcontract entered into pursuant to the Contract, that the Owner assumes no liability relating to its receipt and review of the Contractor's safety program. Safety remains the responsibility of the [Contractor] [Contractors]. Furthermore, the right of the Owner to receive and review the safety program shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the [Contractor] [Contractors] or any other person or entity.

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

### **14.2 TERMINATION BY THE OWNER FOR CAUSE**

Modify the original paragraph as follows:

- 14.2.1.2 At the end of the Subparagraph, before semi-colon, Add "or in accordance with the Contract Documents".

Add the following:

- 14.2.1.5 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise becomes insolvent;
- 14.2.1.6 fails to maintain schedules as required by the Contract Documents, or fails to comply in a material way with design requirements of the Contract Documents, or persistently fails to perform the Work in accordance with the Contract Documents.

Modify the original paragraph as follows:

- 14.2.4 Replace paragraph with: If the unpaid balance of the Contract Sum exceeds the direct and indirect consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs), and other damages incurred by the Owner, such excess will be paid to the Contractor. If such costs and damages exceed such unpaid balance, the Contractor shall pay the difference to the Owner. Such costs incurred by the Owner will be approved as to reasonableness by the Architect, but when exercising any rights or remedies under this paragraph, the Owner shall not be required to obtain the lowest price for the Work performed. This obligation to payment shall survive termination of the Contract.

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

Add the following:

- 15.1.6.3 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a

revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

- 15.1.6.4 The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

## **AIA DOCUMENT A101-2017 EXHIBIT A**

### **ARTICLE A.1 – GENERAL**

Add: Reference to “all-risks” in this document shall mean builder’s risk policy.

### **ARTICLE A.2 – OWNER’S INSURANCE**

#### **A.2.3 REQUIRED PROPERTY INSURANCE**

Modify the original paragraph as follows:

- A.2.3.1 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 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, Architect, Engineers Contractor, Subcontractors, and Sub subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. This insurance is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage per Article A.3.3.2.5 for owned or rented machinery, tools or equipment which shall be subject to the provisions of the General Conditions, Article 11.3 Waivers of Subrogation.

### **ARTICLE A.3 - CONTRACTOR’S INSURANCE AND BONDS**

#### **A.3.1 General**

Modify the original paragraph as follows:

- A.3.1.1 Replace the third sentence with: The certificates will show the Owner and Architect as additional insured on the Contractor’s Commercial General Liability and umbrella liability policy or policies.
- A.3.1.1 Replace the third sentence with: The certificates will show the Owner, the State of North Dakota including its agencies and officers, and Architect as additional insured on the Contractor’s General Liability and umbrella liability and automotive liability policies.

Add the following paragraph:

- A.3.1.1.1 Proof of workmen’s compensation insurance coverage shall be a copy of certificate of premium payment and proof of other insurance coverage shall be fully descriptive standard AIA or ACCORD Certificate of Insurance. The Certificate of Insurance portrays the Insurance Agent’s description of coverages provided the Contractor.

Add the following paragraphs:

- A.3.1.1.2 In addition to the requirements above, the Contractor shall furnish Certificates of Insurance and copies of the additional insured endorsements prior to execution of the Contract. Endorsements shall contain a “Waiver of Subrogation,” waiving any right of recovery the insurance companies may have against the State as well as provisions that the policies and/or endorsements may not be canceled or modified without a thirty (30) day written notice to the Owner, and that any attorney who represents the State under

the policy must first qualify and be appointed by the North Dakota Attorney General as required under NDCC Section 54-12-08.

A.3.1.1.3 The Contractor will receive an Exhibit "E" Waiver of Subrogation Form at the time the contract is sent out, and they shall complete and return said form with the Contract and insurance certificate(s).

A.3.1.3 Modify the first sentence by adding ", the State of North Dakota including its agencies and officers," after "...(1) the Owner" and after "...(2) the Owner".

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

A.3.2.1 Add: The Architect and Owner assume no responsibility in the event that the limits set below are not adequate.

**A.3.3 Contractor's Other Insurance Coverage**

A.3.3.2.1 In fifth sentence replace "Owner" with "General Contractor". See Article 11.5 of both the General Conditions and Section 07 30 00 Supplementary Conditions for additional information.

Add the following paragraphs:

A.3.3.2.1.1 If the Owner is damaged by the failure of the General Contractor to maintain this insurance, then the General Contractor shall bear all reasonable costs properly attributable thereto.

A.3.3.2.4 Add: The Contractor shall provide this insurance if storing materials and equipment off-site. See article 9.3.2 of the General Conditions and Section 00 73 00 Supplementary Conditions for additional requirements relating to materials or equipment stored off-site.

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

Delete second paragraph beginning "Payment and Performance Bonds..." and add:

A.3.4.1 Where there are State, Federal or other jurisdictional bond forms required by statute or regulation, the bond or bonds shall be on those forms, in the amount of 100% of the Contract amount. Where no such requirements exist, the Contractor shall furnish both AIA A312 Performance and AIA A312 Labor and Material Payment Bond, current as of the date of the agreement. Each bond, Performance and Payment shall be in the amount of 100% of the Contract amount.

A.3.4.2 The Contractor shall require the attorney-in-fact who executes the required surety bonds on behalf of the surety to affix thereto a certified and correct copy of the power of attorney.

A.3.4.3 Bond amounts shall not exceed the single bond limit for the Contractor's bonding company as set forth in the Federal Register current as of the bid date.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION 00 73 00**

## **SECTION 01 10 00 - SUMMARY**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section Includes:
  - 1. Project Information.
  - 2. Contract description.
  - 3. Work by Owner or other Work at the Site.
  - 4. Contractor's use of Site and premises.
  - 5. Work sequence.
  - 6. Owner occupancy.
  - 7. Permits.
  - 8. Specification conventions.

#### **1.2 PROJECT INFORMATION**

- A. Name: Traill County Courthouse East Steps Restoration
  - 1. Project Location: 114 West Caledonia, Hillsboro, ND 58045
- B. Project Architect: Hepper Olson Architects, Ltd.
  - 1. Architect's Representative: Bobbi Hepper Olson.

#### **1.3 CONTRACT DESCRIPTION**

- A. Work of the Project includes demolition work, new construction, and alteration of existing.
- B. Perform Work under stipulated sum Contract with Owner according to Conditions of Contract. Work to include General Construction. No mechanical or electrical work.

#### **1.4 CONTRACTOR'S USE OF SITE AND PREMISES**

- A. Limit use of Site and premises to allow:
  - 1. Owner occupancy.
- B. Access to Site: Limited to exterior steps, coordinate with owner parking and working hours.
- C. Construction Operations:
  - 1. Limited to areas indicated on Drawings.
- D. Time Restrictions for Performing Work: Coordinate with owner prior to start of the project
- E. Utility Outages and Shutdown:
  - 1. Coordinate and schedule electrical and other utility outages with Owner if encountered.
- F. Construction Plan: Before start of construction, submit one hard copy and email electronic copy of construction plan regarding access to Work, use of Site, and utility outages for acceptance by Owner. After acceptance of plan, construction operations shall comply with accepted plan unless deviations are accepted by Owner in writing.

#### **1.5 WORK SEQUENCE**

- A. Construct Work in stages to allow for occupancy of existing building to remain in order to accommodate Owner's occupancy requirements. Only disconnect utilities once new facility is fully functioning and ready for switch over. Coordinate construction schedule and operations with Architect/Engineer and Owner:
- B. Sequencing of Construction Plan: Before start of construction, submit one hard copy and email electronic copy of construction plan regarding phasing of demolition, renovation, and new Work for acceptance by Owner. After acceptance of plan, construction sequencing shall comply with accepted plan unless deviations are accepted by Owner in writing.

#### **1.6 OWNER OCCUPANCY**

- A. Owner will occupy premises during entire period of construction for conduct of normal operations.
- B. Cooperate with Owner to minimize conflict and to facilitate Owner's operations.

#### **1.7 PERMITS**

- A. Furnish all necessary permits for construction of Work including the following:

1. Building permit.

1.8 SPECIFICATION CONVENTIONS

A. These Specifications are written in imperative mood and streamlined form. This imperative language is directed to Contractor unless specifically noted otherwise. The words "shall be" are included by inference where a colon (:) is used within sentences or phrases.

**PART 2 - PRODUCTS - Not Used**

**PART 3 - EXECUTION - Not Used**

**End Of Section**

## **SECTION 01 20 00 - PRICE AND PAYMENT PROCEDURES**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Schedule of Values.
- B. Application for Payment.
- C. Change procedures.
- D. Defect assessment.

#### **1.2 SCHEDULE OF VALUES**

- A. Submit printed schedule on AIA G703 - Continuation Sheet for G702.
- B. Submit Schedule of Values as established in Notice to Proceed.
- C. Format: Use Table of Contents of this Project Manual. Identify each line item with number and title of major Specification Section, include labor and material of each Section. Also identify Site mobilization, bonds and insurance, and profit/overhead.
- D. Include line item amount for allowances as specified in this Section.
- E. Revise schedule to list approved Change Orders with each Application for Payment.

#### **1.3 APPLICATION FOR PAYMENT**

- A. Submit three copies of each Application for Payment on AIA G702 - Application and Certificate for Payment and AIA G703 - Continuation Sheet for G702.
- B. Content and Format: Use Schedule of Values for listing items in Application for Payment.
- C. Submit updated construction schedule with each Application for Payment.
- D. Submit waivers requested by Owner.
- E. Substantiating Data: When Architect/Engineer requires substantiating information, submit data justifying dollar amounts in question. Include the following with Application for Payment:
  - 1. Current construction photographs.
  - 2. Partial release of liens from major Subcontractors and vendors.
  - 3. Record Documents, for review by Owner, which will be returned to Contractor.
  - 4. Affidavits attesting to off-Site stored products.
  - 5. Construction Progress Schedule, revised and current.

#### **1.4 CHANGE PROCEDURES**

- A. Submittals: Submit name of individual who is authorized to receive change documents and is responsible for informing others in Contractor's employ or Subcontractors of changes to the Work.
- B. Carefully study and compare Contract Documents before proceeding with fabrication and installation of Work. Promptly advise Architect/Engineer of any error, inconsistency, omission, or apparent discrepancy.
- C. Requests for Interpretation (RFI) and Clarifications: Allot time in construction scheduling for liaison with Architect/Engineer; establish procedures for handling queries and clarifications.
  - 1. Use AIA G716 - Request for Information, or CSI Form 13.2A - Request for Interpretation, or Approved Contractors form for requesting interpretations.
  - 2. Architect/Engineer may respond with a direct answer on the Request for Interpretation form, Clarification Notice, AIA G710 - Architect's Supplemental Instruction, or Proposal Request AIA G709 - Work Changes Proposal Request.
- D. Architect/Engineer will advise of minor changes in the Work not involving adjustment to Contract Sum/Price or Contract Time by issuing supplemental instructions on AIA G710.
- E. Architect/Engineer may issue Proposal Request including a detailed description of proposed change with supplementary or revised Drawings and Specifications, a change in Contract Time for executing the change.
- F. Contractor may propose changes by submitting a request for change to Architect/Engineer, describing proposed change and its full effect on the Work. Include a statement describing reason for the change and the effect on Contract Sum/Price and Contract Time with full documentation and a statement describing effect on the Work by separate or other Contractors.



- G. Stipulated Sum/Price Change Order: Based on Proposal Request and Contractor's fixed price quotation or Contractor's request for Change Order as approved by Architect/Engineer.
- H. Unit Price Change Order: For Contract unit prices and quantities, the Change Order will be executed on a fixed unit price basis. For unit costs or quantities of units of that which are not predetermined, execute Work under Construction Change Directive. Changes in Contract Sum/Price or Contract Time will be computed as specified for Time and Material Change Order.
- I. Construction Change Directive: Architect/Engineer may issue directive, on AIA G714 - Construction Change Directive signed by Owner, instructing Contractor to proceed with change in the Work, for subsequent inclusion in a Change Order. Document will describe changes in the Work and designate method of determining any change in Contract Sum/Price or Contract Time. Promptly execute change.
- J. Document each quotation for change in Project Cost or Time with sufficient data to allow evaluation of quotation.
- K. Change Order Forms: AIA G701 - Change Order.

#### 1.5 DEFECT ASSESSMENT

- A. Replace the Work, or portions of the Work, not conforming to specified requirements.
- B. If, in the opinion of Architect/Engineer, it is not practical to remove and replace the Work, Architect/Engineer will direct appropriate remedy or adjust payment.
- C. The defective Work may remain, but unit sum/price will be adjusted to new sum/price at discretion of Architect/Engineer and reviewed with Owner.
- D. Defective Work will be partially repaired according to instructions of Architect/Engineer, and unit sum/price will be adjusted to new sum/price at discretion of Architect/Engineer and reviewed with Owner.
- E. Authority of Architect/Engineer to assess defects and identify payment adjustments is final.

#### **PART 2 - PRODUCTS - Not Used**

#### **PART 3 - EXECUTION - Not Used**

#### **End Of Section**

## **SECTION 01 25 00 - SUBSTITUTION PROCEDURES**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Quality assurance.
- B. Product substitution procedures.

#### **1.2 QUALITY ASSURANCE**

- A. Contracts are based on products and standards established in Contract Documents without consideration of proposed substitutions.
- B. Products specified define standard of quality, type, function, dimension, appearance, and performance required.
- C. Substitution Proposals: Permitted for specified products except where specified otherwise. Do not substitute products unless substitution has been accepted and approved in writing by Owner.

#### **1.3 PRODUCT SUBSTITUTION PROCEDURES**

- A. Substitutions may be considered when a product becomes unavailable through no fault of Contractor.
- B. Document each request with complete data, substantiating compliance of proposed substitution with Contract Documents, including:
  - 1. Manufacturer's name and address, product, trade name, model, or catalog number, performance and test data, and reference standards.
  - 2. Itemized point-by-point comparison of proposed substitution with specified product, listing variations in quality, performance, and other pertinent characteristics.
  - 3. Reference to Article and Paragraph numbers in Specification Section.
  - 4. Cost data comparing proposed substitution with specified product and amount of net change to Contract Sum.
  - 5. Changes required in other Work.
  - 6. Availability of maintenance service and source of replacement parts as applicable.
  - 7. Certified test data to show compliance with performance characteristics specified.
  - 8. Samples when applicable or requested.
  - 9. Other information as necessary to assist Architect/Engineer's evaluation.
- C. A request constitutes a representation that Bidder or Contractor:
  - 1. Has investigated proposed product and determined that it meets or exceeds quality level of specified product.
  - 2. Will provide same warranty for substitution as for specified product.
  - 3. Will coordinate installation and make changes to other Work that may be required for the Work to be complete with no additional cost to Owner.
  - 4. Waives claims for additional costs or time extension that may subsequently become apparent.
  - 5. Will coordinate installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.
  - 6. Will reimburse Owner and Architect/Engineer for review or redesign services associated with reapproval by authorities having jurisdiction.
- D. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals without separate written request or when acceptance will require revision to Contract Documents.
- E. Substitution Submittal Procedure:
  - 1. Submit requests for substitutions on form attached to end of this Section.
  - 2. Submit electronic copy of Request for Substitution for consideration. Limit each request to one proposed substitution.
  - 3. Submit Shop Drawings, Product Data, and certified test results attesting to proposed product equivalence. Burden of proof is on proposer.
  - 4. Architect/Engineer will notify Contractor in writing of decision to accept or reject request.

#### 1.4 INSTALLER SUBSTITUTION PROCEDURES

- A. Document each request with:
  - 1. Installer's qualifications.
  - 2. Installer's experience in work similar to that specified.
  - 3. Other information as necessary to assist Architect/Engineer's evaluation.
- B. Substitution Submittal Procedure:
  - 1. Submit electronic copy of Request for Substitution for consideration. Limit each request to one proposed substitution.
  - 2. Architect/Engineer will notify Contractor in writing of decision to accept or reject request.

**PART 2 - PRODUCTS - Not Used**

**PART 3 - EXECUTION - Not Used**

**End Of Section**

## **SECTION 01 30 00 - ADMINISTRATIVE REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Coordination and Project conditions.
- B. Preconstruction meeting.
- C. Site mobilization meeting.
- D. Progress meetings.
- E. Preinstallation meetings.
- F. Closeout meeting.
- G. Alteration procedures.

#### **1.2 COORDINATION AND PROJECT CONDITIONS**

- A. Coordinate scheduling, submittals, and Work of various Sections of Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements.
- B. Verify that utility requirements and characteristics of operating equipment are compatible with building utilities. Coordinate Work of various Sections having interdependent responsibilities for installing, connecting to, and placing operating equipment in service.
- C. Coordinate space requirements, supports, and installation of mechanical and electrical Work indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit as closely as practical; place runs parallel with lines of building. Use spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
  - 1. Coordination Drawings: Prepare as required to coordinate all portions of Work. Show relationship and integration of different construction elements that require coordination during fabrication or installation to fit in space provided or to function as intended. Indicate locations where space is limited for installation and access and where sequencing and coordination of installations are important.
- D. Coordination Meetings: In addition to other meetings specified in this Section, hold coordination meetings with personnel and Subcontractors to ensure coordination of Work.
- E. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within construction. Coordinate locations of fixtures and outlets with finish elements.

#### **1.3 PRECONSTRUCTION MEETING**

- A. ARCHITECT will schedule and preside over meeting after Notice of Proceed is issued and signed.
- B. Attendance Required: Architect/Engineer, Owner, Resident Project Representative, appropriate governmental agency representatives (includes USDA representative and CDBG funding representative), major Subcontractors, and Contractor.
- C. Minimum Agenda:
  - 1. Execution of Owner-Contractor Agreement.
  - 2. Submission of executed bonds and insurance certificates.
  - 3. Submission of list of Subcontractors, list of products, schedule of values, and Progress Schedule.
  - 4. Designation of personnel representing parties in Contract, Owner's Representatives, Funding sources representatives, and Architect/Engineer.
  - 5. Communication procedures.
  - 6. Procedures and processing of requests for interpretations, field decisions, submittals, substitutions, Applications for Payments, proposal request, Change Orders, and Contract closeout procedures.
  - 7. Scheduling.
  - 8. Critical Work sequencing.
  - 9. Scheduling activities of Geotechnical Engineer.
- D. Architect: Record minutes and distribute electronically to participants within five days after meeting, Owner, and those affected by decisions made.

#### 1.4 SITE MOBILIZATION MEETING

- A. ARCHITECT will schedule and preside over meeting at Project Site prior to Contractor occupancy.
- B. Attendance Required: Architect/Engineer, Owner, Contractor, Contractor's Superintendent, major Contractors, major Subcontractors, and Owner Representatives.
- C. Minimum Agenda:
  - 1. Use of premises by Owner and Contractor.
  - 2. Owner's requirements and occupancy.
  - 3. Construction facilities and controls provided by Owner.
  - 4. Temporary utilities.
  - 5. Survey and building layout.
  - 6. Security and housekeeping procedures.
  - 7. Schedules.
  - 8. Procedures for testing.
  - 9. Procedures for maintaining record documents.
  - 10. Requirements for startup of equipment.
  - 11. Inspection and acceptance of equipment put into service during construction period.
- D. Architect: Record minutes and distribute electronically to participants within five days after meeting, Owner, and those affected by decisions made.

#### 1.5 PROGRESS MEETINGS

- A. GENERAL CONTRACTOR: Schedule and administer meetings throughout progress of the Work at maximum bi-monthly intervals.
- B. Make arrangements for meetings, prepare agenda with copies for participants, and preside over meetings.
- C. Attendance Required: Job superintendent, major Contractors, subcontractors with work in progress, and Architect/Engineer, Owner, as appropriate to agenda topics for each meeting.
- D. Minimum Agenda:
  - 1. Review minutes of previous meetings.
  - 2. Review of Work progress.
  - 3. Field observations, problems, and decisions.
  - 4. Identification of problems impeding planned progress.
  - 5. Review of submittal schedule and status of submittals.
  - 6. Review of off-site fabrication and delivery schedules.
  - 7. Maintenance of Progress Schedule.
  - 8. Corrective measures to regain projected schedules.
  - 9. Planned progress during succeeding work period.
  - 10. Coordination of projected progress.
  - 11. Maintenance of quality and work standards.
  - 12. Effect of proposed changes on Progress Schedule and coordination.
  - 13. Other business relating to Work.
- E. GENERAL CONTRACTOR: Record minutes and distribute electronic copy within five days to participants after meeting, to Architect/Engineer, Owner, and those affected by decisions made.

#### 1.6 PREINSTALLATION MEETINGS

- A. When required in individual Specification Sections, convene preinstallation meetings at Project Site before starting Work of specific Section.
- B. Require attendance of parties directly affecting, or affected by, Work of specific Section.
- C. Notify Architect/Engineer four days in advance of meeting date.
- D. Prepare agenda and preside over meeting:
  - 1. Review conditions of installation, preparation, and installation procedures.
  - 2. Review coordination with related Work.
- E. Record minutes and distribute electronic copies to participants within five days after meeting, to Architect/Engineer, Owner, and those affected by decisions made.

#### 1.7 CLOSEOUT MEETING

- A. GENERAL CONTRACTOR: Schedule Project closeout meeting with sufficient time to prepare for requesting Substantial Completion. Preside over meeting and be responsible for minutes.
- B. Attendance Required: Contractor, major Contractors major Subcontractors, Architect/Engineer, Owner, and others appropriate to agenda.

- C. Notify Architect/Engineer fourteen days in advance of meeting date.
- D. Minimum Agenda:
  - 1. Start-up of facilities and systems.
  - 2. Operations and maintenance manuals.
  - 3. Testing, adjusting, and balancing.
  - 4. System demonstration and observation.
  - 5. Operation and maintenance instructions for Owner's personnel.
  - 6. Contractor's inspection of Work.
  - 7. Contractor's preparation of an initial "punch list."
  - 8. Procedure to request Architect/Engineer inspection to determine date of Substantial Completion.
  - 9. Completion time for correcting deficiencies.
  - 10. Inspections by authorities having jurisdiction.
  - 11. Certificate of Occupancy and transfer of insurance responsibilities.
  - 12. Partial release of retainage.
  - 13. Final cleaning.
  - 14. Preparation for final inspection.
  - 15. Closeout Submittals:
    - a. Project record documents.
    - b. Operating and maintenance documents.
    - c. Operating and maintenance materials.
    - d. Affidavits.
  - 16. Final Application for Payment.
  - 17. Contractor's demobilization of Site.
  - 18. Maintenance.
- E. GENERAL CONTRACTOR: Record minutes and distribute electronic copy within five days to participants after meeting, to Architect/Engineer, Owner, and those affected by decisions made.

## **PART 2 - PRODUCTS - Not Used**

## **PART 3 - EXECUTION**

### **3.1 ALTERATION PROCEDURES**

- A. Designated areas of existing facilities will be occupied for normal operations during progress of construction. Cooperate with Owner in scheduling operations to minimize conflict and to permit continuous usage.
  - 1. Perform Work not to interfere with operations of occupied areas.
  - 2. Keep utility and service outages to a minimum and perform only after written approval of Owner.
  - 3. Clean Owner-occupied areas daily. Clean spillage, overspray, and heavy collection of dust in Owner-occupied areas immediately.
- B. Materials: As specified in product Sections; match existing products with new products for patching and extending Work.
- C. Employ skilled and experienced installer to perform alteration and renovation Work.
- D. Cut, move, or remove items as necessary for access to alterations and renovation Work. Replace and restore at completion.
- E. Remove unsuitable material not marked for salvage, including rotted wood, corroded metals, and deteriorated masonry and concrete. Replace materials as specified for finished Work.
- F. Remove debris and abandoned items from area and from concealed spaces.
- G. Prepare surface and remove surface finishes to permit installation of new Work and finishes.
- H. Close openings in exterior surfaces to protect existing Work from weather and extremes of temperature and humidity.
- I. Remove, cut, and patch Work to minimize damage and to permit restoring products and finishes to original or specified condition.
- J. Refinish existing visible surfaces to remain in renovated rooms and spaces, to specified condition for each material, with neat transition to adjacent finishes.
- K. Where new Work abuts or aligns with existing Work, provide smooth and even transition. Patch Work to match existing adjacent Work in texture and appearance.



- L. When finished surfaces are cut so that smooth transition with new Work is not possible, terminate existing surface along straight line at natural line of division and submit recommendation to Architect/Engineer for review.
- M. Where change of plane of 1/4 inch or more occurs, submit recommendation for providing smooth transition to Architect/Engineer for review.
- N. Trim existing doors to clear new floor finish. Refinish trim to specified condition.
- O. Patch or replace portions of existing surfaces that are damaged, lifted, discolored, or showing other imperfections.
- P. Finish surfaces as specified in individual product Sections.

**End Of Section**

## **SECTION 01 32 16 - CONSTRUCTION PROGRESS SCHEDULE**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Submittals.
- B. Format.
- C. Review and evaluation.
- D. Distribution.

#### **1.2 SUBMITTALS**

- A. As established in Notice to Proceed, submit draft of proposed complete bar chart schedule for review. Within seven days after joint review, submit revised Progress Schedule.
- B. Submit updated schedules with each Application for Payment.
- C. Schedule Updates:
  - 1. Overall percent complete, projected and actual.
  - 2. Completion progress by listed activity and sub-activity.
  - 3. Changes in Work scope and activities modified since submittal.
  - 4. Delays in submittals or resubmittals, deliveries, or Work.
  - 5. Adjusted or modified sequences of Work.
  - 6. Other identifiable changes.
  - 7. Revised projections of progress and completion.

#### **1.3 FORMAT**

- A. Computer-generated bar chart schedule to include at least:
  - 1. Identification and listing in chronological order of those activities reasonably required to complete the Work, including:
    - a. Subcontract Work.
    - b. Major equipment design, fabrication, factory testing, and delivery dates including required lead times.
    - c. Move-in and other preliminary activities.
    - d. Equipment and equipment system test and startup activities.
    - e. Project closeout and cleanup.
    - f. Work sequences, constraints, and milestones.
  - 2. Listings identified by Specification Section number.
  - 3. Identification of the following:
    - a. Horizontal time frame by year, month, and week.
    - b. Duration, early start, and completion for each activity and subactivity.
    - c. Critical activities and Project float.
    - d. Subschedules to further define critical portions of Work.

#### **1.4 REVIEW AND EVALUATION**

- A. Participate in joint review and evaluation of schedules with Architect at each submittal.
- B. Evaluate Project status to determine Work behind schedule and Work ahead of schedule.
- C. After review, revise schedules incorporating results of review, and resubmit at next construction meeting.

#### **1.5 DISTRIBUTION**

- A. Following joint review, distribute copies of updated schedules to Subcontractors, suppliers, Architect, Owner, and other concerned parties.
- B. Instruct recipients to promptly report, in writing, problems anticipated by projections shown in schedules.

**PART 2 - PRODUCTS - Not Used**

**PART 3 - EXECUTION - Not Used**

**End Of Section**

## **SECTION 01 33 00 - SUBMITTAL PROCEDURES**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Definitions.
- B. Submittal procedures.
- C. Proposed product list.
- D. Product data.
- E. Use of electronic CAD files of Project Drawings.
- F. Shop Drawings.
- G. Samples.
- H. Design data.
- I. Certificates.
- J. Manufacturer's instructions.
- K. Manufacturer's field reports.
- L. Construction photographs.
- M. Contractor review.
- N. Architect/Engineer review.

#### **1.2 SUBMITTAL PROCEDURES**

- A. Transmit each submittal with Transmittal Letter.
- B. Sequentially number transmittal forms. Mark revised submittals with original number and sequential alphabetic suffix.
- C. Identify: Project, Contractor, Subcontractor and supplier, pertinent Drawing and detail number, and Specification Section number appropriate to submittal.
- D. Apply Contractor's stamp, signed or initialed, certifying that review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is according to requirements of the Work and Contract Documents.
- E. Schedule submittals to expedite Project, and submit electronic submittals via email as PDF electronic files. Coordinate submission of related items.
- F. For each submittal for review, allow 15 days excluding delivery time to and from Contractor.
- G. Identify variations in Contract Documents and product or system limitations that may be detrimental to successful performance of completed Work.
- H. Allow space on submittals for Contractor and Architect/Engineer review stamps.
- I. When revised for resubmission, identify changes made since previous submission.
- J. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- K. Incomplete Submittals: Architect/Engineer will not review. Complete submittals for each item are required. Delays resulting from incomplete submittals are not the responsibility of Architect/Engineer.

#### **1.3 PROPOSED PRODUCT LIST**

- A. Within 15 days after date of Notice to Proceed, submit list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
- B. For products specified only by reference standards, indicate manufacturer, trade name, model or catalog designation, and reference standards.

#### **1.4 PRODUCT DATA**

- A. Product Data: Action Submittal: Submit to Architect/Engineer for review for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Submit electronic submittals via email as PDF electronic files.
- C. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- D. Indicate product utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.

- E. After review, produce copies and distribute.

#### 1.5 SHOP DRAWINGS

- A. Shop Drawings: Action Submittal: Submit to Architect/Engineer for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Indicate special utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- C. When required by individual Specification Sections, provide Shop Drawings signed and sealed by a professional Engineer responsible for designing components shown on Shop Drawings.
  - 1. Include signed and sealed calculations to support design.
  - 2. Submit Shop Drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
  - 3. Make revisions and provide additional information when required by authorities having jurisdiction. The following alternative Paragraphs describe different methods of Shop Drawing submission; indicate preferred method of submission. The transparency method in first Paragraph is recommended. Second Paragraph involves a quantity of opaque copies; reviewing and marking up duplicate printed copies are potentially dangerous if an inadvertent marking error is made. Retain and edit third Paragraph to coordinate with Project communication procedures.
- D. Submit electronic submittals via email as PDF electronic files.
- E. After review, distribute.

#### 1.6 SAMPLES

- A. Samples: Action Submittal: Submit to Architect/Engineer for assessing conformance with information given and design concept expressed in Contract Documents.
- B. Samples for Selection as Specified in Product Sections:
  - 1. Submit to Architect/Engineer for aesthetic, color, and finish selection.
  - 2. Submit Samples of finishes, textures, and patterns for Architect/Engineer selection.
- C. Submit Samples to illustrate functional and aesthetic characteristics of products, with integral parts and attachment devices. Coordinate Sample submittals for interfacing work.
- D. Include identification on each Sample, with full Project information.
- E. Submit number of Samples specified in individual Specification Sections; Architect/Engineer will retain one Sample.
- F. Reviewed Samples that may be used in the Work are indicated in individual Specification Sections.
- G. After review, distribute.

#### 1.7 DESIGN DATA

- A. Informational Submittal: Submit data for Architect/Engineer's knowledge as Contract administrator or for Owner.
- B. Submit information for assessing conformance with information given and design concept expressed in Contract Documents.

#### 1.8 CERTIFICATES

- A. Informational Submittal: Submit certification by manufacturer, installation/application Subcontractor, or Contractor to Architect/Engineer, in quantities specified for Product Data.
- B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
- C. Certificates may be recent or previous test results on material or product but must be acceptable to Architect/Engineer.

#### 1.9 MANUFACTURER'S INSTRUCTIONS

- A. Informational Submittal: Submit manufacturer's installation instructions for Architect/Engineer's knowledge as Contract administrator or for Owner.
- B. Submit printed instructions for delivery, storage, assembly, installation, adjusting, and finishing, to Architect/Engineer in quantities specified for Product Data.
- C. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.

#### 1.10 MANUFACTURER'S FIELD REPORTS

- A. Informational Submittal: Submit reports for Architect/Engineer's knowledge as Contract administrator or for Owner.
- B. Submit report within 5 days of observation to Architect/Engineer for information.
- C. Submit reports for information for assessing conformance with information given and design concept expressed in Contract Documents.

#### 1.11 CONSTRUCTION PHOTOGRAPHS

- A. Provide photographs of Site and construction throughout progress of Work.
- B. Twice monthly submit photographs with Application for Payment.
- C. Take photographs as evidence of existing Project conditions as follows:
  - 1. Interior views, with date of photo.
  - 2. Exterior views, with date of photo.

#### 1.12

#### CONTRACTOR REVIEW

- A. Review for compliance with Contract Documents and approve submittals before transmitting to Architect/Engineer.
- B. Contractor: Responsible for:
  - 1. Determination and verification of materials including manufacturer's catalog numbers.
  - 2. Determination and verification of field measurements and field construction criteria.
  - 3. Checking and coordinating information in submittal with requirements of Work and of Contract Documents.
  - 4. Determination of accuracy and completeness of dimensions and quantities.
  - 5. Confirmation and coordination of dimensions and field conditions at Site.
  - 6. Construction means, techniques, sequences, and procedures.
  - 7. Safety precautions.
  - 8. Coordination and performance of Work of all trades.
- C. Stamp, sign or initial, and date each submittal to certify compliance with requirements of Contract Documents.
- D. Do not fabricate products or begin Work for which submittals are required until approved submittals have been received from Architect/Engineer.

#### 1.13

#### ARCHITECT/ENGINEER REVIEW

- A. Informational submittals and other similar data are for Architect/Engineer's information, do not require Architect/Engineer's responsive action, and will not be reviewed or returned with comment.
- B. Submittals made by Contractor that are not required by Contract Documents may be returned without action.
- C. Submittal approval does not authorize changes to Contract requirements unless accompanied by Change Order or Architect's Supplemental Instruction.
- D. Owner may withhold monies due to Contractor to cover additional costs beyond the second submittal review.

### **PART 2 - PRODUCTS - Not Used**

### **PART 3 - EXECUTION - Not Used**

### **End Of Section**



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## **SECTION 01 35 91 - HISTORIC TREATMENT PROCEDURES**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes general protection and treatment procedures for designated historic surfaces in Project.

#### **1.2 DEFINITIONS**

- A. Consolidate: To strengthen loose or deteriorated materials in place.
- B. Design Reference Sample: A sample that represents the Architect's prebid selection of work to be matched; it may be existing work or work specially produced for the Project.
- C. Dismantle: To disassemble or detach a historic item from a surface, or a nonhistoric item from a historic surface, using gentle methods and equipment to prevent damage to historic items and surfaces; disposing of items unless indicated to be salvaged or reinstalled.
- D. Historic: Spaces, areas, rooms, surfaces, materials, finishes, and overall appearance that are important to the successful rehabilitation and reconstruction as determined by Architect. Designated historic surfaces are indicated on Drawings.
- E. Match: To blend with adjacent construction and manifest no apparent difference in material type, species, cut, form, detail, color, grain, texture, or finish; as approved by Architect.
- F. Refinish: To remove existing finishes to base material and apply new finish to match original, or as otherwise indicated.
- G. Reinstall: To protect removed or dismantled item, repair and clean it as indicated for reuse, and reinstall it in original position, or where indicated.
- H. Remove: To take down or detach a nonhistoric item located within a historic space, area, or room, using methods and equipment to prevent damage to historic items and surfaces; disposing of items unless indicated to be salvaged or reinstalled.
- I. Repair: To correct damage and defects, retaining existing materials, features, and finishes while employing as little new material as possible. This includes patching, piecing-in, splicing, consolidating, or otherwise reinforcing or upgrading materials.
- J. Replace: To remove, duplicate, and reinstall entire item with new material. The original item is the pattern for creating duplicates unless otherwise indicated.
- K. Replicate: To reproduce in exact detail, materials, and finish unless otherwise indicated.
- L. Reproduce: To fabricate a new item, accurate in detail to the original, and from either the same or a similar material as the original, unless otherwise indicated.
- M. Restore: To consolidate, replicate, reproduce, repair, and refinish as required to achieve the indicated results.
- N. Retain: To keep existing items that are not to be removed or dismantled.
- O. Reversible: New construction work, treatments, or processes that can be removed or undone in the future without damaging historic materials unless otherwise indicated.
- P. Salvage: To protect removed or dismantled items and deliver them to Owner[ ready for reuse].
- Q. Stabilize: To provide structural reinforcement of unsafe or deteriorated items while maintaining the essential form as it exists at present; also, to reestablish a weather-resistant enclosure.
- R. Strip: To remove existing finish down to base material unless otherwise indicated.

#### **1.3 MATERIALS OWNERSHIP**

- A. Historic items, relics, and similar objects including, but not limited to, cornerstones and their contents, commemorative plaques and tablets, antiques, and other items of interest or value to Owner that may be encountered or uncovered during the Work, regardless of whether they were previously documented, remain Owner's property.

#### 1.4 QUALITY ASSURANCE

- A. Historic Treatment Specialist Qualifications: An experienced firm regularly engaged in historic treatments similar in nature, materials, design, and extent to this work as specified in each section with a record of successful performance that demonstrates the firm's qualifications to perform this work.
  - 1. Field Supervisor Qualifications: Supervisors experienced in historic treatment work similar in nature, material, design, and extent to that indicated for this Project. Supervisors shall be on Project site when historic treatment work begins and during its progress. Supervisors shall not be changed during Project except for causes beyond the control of the specialist firm.
- B. Fire-Prevention Plan: Appropriate for project.
- C. Safety and Health Standard: Comply with ANSI/ASSE A10.6.

#### 1.5 STORAGE AND HANDLING OF HISTORIC MATERIALS

- A. Salvaged Historic Materials: None identified this project.
- B. Historic Materials for Reinstallation: None identified this project.
- C. Existing Historic Materials to Remain: Protect construction indicated to remain against damage and soiling from construction work. Where permitted by Architect, items may be dismantled and taken to a suitable, protected storage location during construction work and reinstalled in their original locations after historic treatment and construction work in the vicinity is complete.

### **PART 2 - PRODUCTS - (Not Used)**

### **PART 3 - EXECUTION**

#### 3.1 PROTECTION, GENERAL

- A. Protect persons, surrounding surfaces of building, building site, and plants, from harm resulting from historic treatment procedures.
  - 1. Use only proven protection methods, appropriate to each area and surface being protected.
  - 2. Provide temporary barricades, barriers, and directional signage to exclude the public from areas where historic treatment work is being performed.
  - 3. Erect temporary barriers/signage to form and maintain fire-egress routes.
  - 4. Provide shoring, bracing, and supports as necessary. Do not overload structural elements.
  - 5. Protect sidewalks and other surfaces along hauling routes from damage, wear, and staining.
- B. Temporary Protection of Historic Materials:
  - 1. Protect existing historic materials with temporary protections and construction. Do not remove existing materials unless otherwise indicated.
  - 2. Do not attach temporary protection to historic surfaces except as indicated as part of the historic treatment program and approved by Architect.
- C. Comply with each product manufacturer's written instructions for protections and precautions. Protect against adverse effects of products and procedures on people and adjacent materials, components, and vegetation.
- D. Utility and Communications Services:
  - 1. Notify Owner, Architect, authorities having jurisdiction, and entities owning or controlling wires, conduits, pipes, and other services affected by historic treatment work before commencing operations.
  - 2. Disconnect and cap pipes and services as required by authorities having jurisdiction, as required for historic treatment work.
  - 3. Maintain existing services unless otherwise indicated; keep in service, and protect against damage during operations. Provide temporary services during interruptions to existing utilities.

### 3.2 PROTECTION FROM FIRE

- A. General: Follow fire-prevention plan and the following:
  - 1. Comply with NFPA 241 requirements unless otherwise indicated.
  - 2. Remove and keep area free of combustibles, including rubbish, paper, waste, and chemicals, unless necessary for the immediate work.
  - 3. Prohibit smoking by all persons within Project work and staging areas.

### 3.3 GENERAL HISTORIC TREATMENT

- A. Have historic treatment work performed only by qualified historic treatment specialists.
- B. Ensure that supervisory personnel are present when historic treatment work begins and during its progress.
- C. Record existing work before each procedure (preconstruction), and record progress during the work. Use digital preconstruction documentation photographs or video recordings.
- D. Follow the procedures in subparagraphs below and procedures approved in historic treatment program unless otherwise indicated:
  - 1. Use additional material or structure to reinforce, strengthen, prop, tie, and support existing material or structure.
  - 2. Use historically accurate repair and replacement materials and techniques unless otherwise indicated.
  - 3. Record existing work before each procedure (preconstruction) and progress during the work with digital preconstruction documentation photographs or video recordings.
- E. Notify Architect of visible changes in the integrity of material or components whether from environmental causes including biological attack, UV degradation, freezing, or thawing or from structural defects including cracks, movement, or distortion.
  - 1. Do not proceed with the work in question until directed by Architect.
- F. Identify new and replacement materials and features with permanent marks hidden in the completed Work to distinguish them from original materials. Record a legend of identification marks and the locations of the items on record Drawings.

END OF SECTION 01 35 91

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## **SECTION 01 40 00 - QUALITY REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Quality control.
- B. Tolerances.
- C. References.
- D. Labeling.
- E. Mockup requirements.
- F. Manufacturers' field services.

#### **1.2 QUALITY CONTROL**

- A. Monitor quality control over suppliers, manufacturers, products, services, Site conditions, and workmanship, to produce Work of specified quality.
- B. Comply with specified standards as the minimum quality for the Work except where more stringent tolerances, codes, or specified requirements indicate higher standards or more precise workmanship.
- C. Perform Work using persons qualified to produce required and specified quality.
- D. Supervise performance of Work in such manner and by such means to ensure that Work, whether completed or in progress, will not be subjected to harmful, dangerous, damaging, or otherwise deleterious exposure during construction period.

#### **1.3 TOLERANCES**

- A. Monitor fabrication and installation tolerance control of products to produce acceptable Work. Do not permit tolerances to accumulate.
- B. Comply with manufacturers' recommended tolerances and tolerance requirements in reference standards. When such tolerances conflict with Contract Documents, request clarification from Architect/Engineer before proceeding.

#### **1.4 REFERENCES**

- A. For products or workmanship specified by association, trade, or other consensus standards, comply with requirements of standard except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current as of date of Contract Documents except where specific date is established by code.
- C. Obtain copies of standards and maintain on Site when required by product Specification Sections.
- D. When requirements of indicated reference standards conflict with Contract Documents, request clarification from Architect/Engineer before proceeding.
- E. Neither contractual relationships, duties, or responsibilities of parties in Contract nor those of Architect/Engineer shall be altered from Contract Documents by mention or inference in reference documents.

#### **1.5 LABELING**

- A. Attach label from agency approved by authorities having jurisdiction for products, assemblies, and systems required to be labeled by applicable code.
- B. Label Information: Include manufacturer's or fabricator's identification, approved agency identification, and the following information, as applicable, on each label:
  - 1. Model number.
  - 2. Serial number.
  - 3. Performance characteristics.
- C. Manufacturer's Nameplates, Trademarks, Logos, and Other Identifying Marks on Products: Not allowed on surfaces exposed to view in public areas, interior or exterior.

#### 1.6 MOCK-UP REQUIREMENTS

- A. Tests will be performed under provisions identified in this Section and identified in individual product Specification Sections.
- B. Assemble and erect specified or indicated items with specified or indicated attachment and anchorage devices, flashings, seals, and finishes.
- C. Accepted mockups shall be comparison standard for remaining Work.

#### 1.7 MANUFACTURER'S FIELD SERVICES

- A. When specified in individual specification Sections, require material or product suppliers or manufacturers to provide qualified staff personnel to observe Site conditions, conditions of surfaces and installation, quality of workmanship, startup of equipment, and testing, adjusting, and balancing of equipment as applicable, and to initiate instructions when necessary.
- B. Report observations and Site decisions or instructions given to applicators or installers that are supplemental or contrary to manufacturer's written instructions.

#### **PART 2 - PRODUCTS - Not Used**

#### **PART 3 - EXECUTION - Not Used**

#### **PART 4 - End Of Section**



## **SECTION 01 50 00 - TEMPORARY FACILITIES AND CONTROLS**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Temporary Utilities:
  - 1. Temporary electricity.
  - 2. Temporary water service.
  - 3. Temporary sanitary facilities.
- B. Construction Facilities:
  - 1. Field offices and sheds.
  - 2. Parking.
  - 3. Progress cleaning and waste removal.
  - 4. Traffic regulation.
  - 5. Fire-prevention facilities.
- C. Temporary Controls:
  - 1. Barriers.
  - 2. Security.
  - 3. Dust control.
  - 4. Noise control.
  - 5. Pollution control.
- D. Removal of utilities, facilities, and controls.

#### **1.2 TEMPORARY ELECTRICITY**

- A. Owner will pay cost electricity. Exercise measures to conserve energy. Use Owner's existing power extended and supplemented with temporary devices as needed to maintain specified conditions for construction operations.

#### **1.3 TEMPORARY WATER SERVICE**

- A. Owner will pay cost of temporary water. Exercise measures to conserve energy. Use Owner's existing water system, extended and supplemented with temporary devices as needed to maintain specified conditions for construction operations.

#### **1.4 TEMPORARY SANITARY FACILITIES**

- A. Provide and maintain required facilities and enclosures. Provide facilities at time of Project mobilization.

#### **1.5 FIELD OFFICES AND SHEDS**

- A. Do not use existing facilities for field offices or for storage.
- B. Locate field offices and sheds as directed by Owner.
- C. Removal: At completion of Work remove buildings, foundations, utility services, and debris. Restore areas to same or better condition as original condition.

#### **1.6 PARKING**

- A. Street parking to be arranged with Owner and determined at Site Mobilization meeting.
- B. Maintenance:
  - 1. Maintain traffic and parking areas in sound condition free of excavated material, construction equipment, products, mud, snow, ice, and the like.
  - 2. Maintain existing and permanent paved areas used for construction; promptly repair breaks, potholes, low areas, standing water, and other deficiencies, to maintain paving and drainage in original condition.
- C. Removal, Repair:
  - 1. Repair existing facilities damaged by use, to original condition.

#### 1.7 PROGRESS CLEANING AND WASTE REMOVAL

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain Site in clean and orderly condition.
- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, before enclosing spaces.
- C. Broom and vacuum clean interior areas before starting surface finishing, and continue cleaning to eliminate dust.
- D. Collect and remove waste materials, debris, and rubbish from Site weekly and dispose of off-Site.

#### 1.8 TRAFFIC REGULATION

- A. Traffic Signs and Signals:
  - 1. Provide signs at approaches to Site and on Site, at crossroads, detours, parking areas, and elsewhere as needed to direct construction and affected public traffic.
  - 2. Provide, operate, and maintain traffic control signals to direct and maintain orderly flow of traffic in areas under Contractor's control and areas affected by Contractor's operations.
  - 3. Relocate signs and signals as Work progresses, to maintain effective traffic control.

#### 1.9 FIRE-PREVENTION FACILITIES

- A. No smoking on project site.
- B. Establish fire watch for cutting, welding, and other hazardous operations capable of starting fires. Maintain fire watch before, during, and after hazardous operations until threat of fire does not exist.
- C. Portable Fire Extinguishers: NFPA 10; 10-pound capacity, 4A-60B: C UL rating.
  - 1. Provide minimum of one fire extinguisher in every construction trailer and storage shed.
  - 2. Provide minimum of one fire extinguisher on roof during roofing operations using heat-producing equipment.

#### 1.10 BARRIERS

- A. Provide barriers to prevent unauthorized entry to construction areas and to protect existing facilities and adjacent properties from damage from construction operations and demolition.
- B. Protect non-owned vehicular traffic, stored materials, Site, and structures from damage.

#### 1.11 SECURITY

- A. Security Program:
  - 1. Protect Work on existing premises and Owner's operations from theft, vandalism, and unauthorized entry.
  - 2. Initiate program in coordination with Owner's existing security system at Project mobilization.
  - 3. Maintain program throughout construction period.

#### 1.12 DUST CONTROL

- A. Execute Work by methods that minimize raising dust from construction operations.
- B. Provide positive means to prevent airborne dust from dispersing into atmosphere and into Owner-occupied areas.

#### 1.13 NOISE CONTROL

- A. Provide methods, means, and facilities to minimize noise produced by construction operations.

#### 1.14 POLLUTION CONTROL

- A. Provide methods, means, and facilities to prevent contamination of soil, water, and atmosphere from discharge of noxious, toxic substances and pollutants produced by construction operations.
- B. Comply with pollution and environmental control requirements of authorities having jurisdiction.
- C. Collect all paint being stripped and removed and properly dispose of off site.

#### 1.15 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS

- A. Remove temporary utilities, equipment, facilities, and materials before Substantial Completion inspection.
- B. Remove underground installations to minimum depth of 2 feet. Grade Site as indicated on Drawings.
- C. Clean and repair damage caused by installation or use of temporary Work.

D. Restore existing and permanent facilities used during construction to original condition. Restore permanent facilities used during construction to specified condition.

**PART 2 - PRODUCTS - Not Used**

**PART 3 - EXECUTION - Not Used**

**End Of Section**

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## **SECTION 01 60 00 - PRODUCT REQUIREMENTS**

### **PART 1 - GENERAL**

#### 1.1 SECTION INCLUDES

- A. Products.
- B. Product delivery requirements.
- C. Product storage and handling requirements.
- D. Product options.

#### 1.2 PRODUCTS

- A. At minimum, comply with specified requirements and reference standards.
- B. Specified products define standard of quality, type, function, dimension, appearance, and performance required.
- C. Furnish products of qualified manufacturers that are suitable for intended use. Furnish products of each type by single manufacturer unless specified otherwise. Confirm that manufacturer's production capacity can provide sufficient product, on time, to meet Project requirements.
- D. Do not use materials and equipment removed from existing premises except as specifically permitted by Contract Documents.

#### 1.3 PRODUCT DELIVERY REQUIREMENTS

- A. Transport and handle products according to manufacturer's instructions.
- B. Promptly inspect shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.
- C. Provide equipment and personnel to handle products; use methods to prevent soiling, disfigurement, or damage.

#### 1.4 PRODUCT STORAGE AND HANDLING REQUIREMENTS

- A. Store and protect products according to manufacturer's instructions.
- B. Store products with seals and labels intact and legible.
- C. Store sensitive products in weathertight, climate-controlled enclosures in an environment suitable to product.
- D. For exterior storage of fabricated products, place products on sloped supports aboveground.
- E. Provide bonded off-Site storage and protection when Site does not permit on-Site storage or protection.
- F. Store loose granular materials on solid flat surfaces in well-drained area. Prevent mixing with foreign matter.
- G. Provide equipment and personnel to store products; use methods to prevent soiling, disfigurement, or damage.

#### 1.5 PRODUCT OPTIONS

- A. Products Specified by Reference Standards or by Description Only: Products complying with specified reference standards or description.
- B. Products Specified by Naming One or More Manufacturers: Products of one of manufacturers named and complying with Specifications; no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with Provision for Substitutions: Submit Request for Substitution for any manufacturer not named, according to Section 01 25 00 - Substitution Procedures.

### **PART 2 - PRODUCTS - Not Used**

### **PART 3 - EXECUTION - Not Used**

**End Of Section**

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## **SECTION 01 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS**

### **PART 1 - GENERAL**

#### **1.1 SECTION INCLUDES**

- A. Closeout procedures.
- B. Demonstration and instructions.
- C. Testing, adjusting, and balancing.
- D. Project record documents.
- E. Operation and maintenance data.
- F. Manual for materials and finishes.
- G. Product warranties and product bonds.
- H. Examination.
- I. Preparation.
- J. Execution.
- K. Cutting and patching.
- L. Protecting installed construction.
- M. Final cleaning.

#### **1.2 CLOSEOUT PROCEDURES**

- A. Prerequisites to Substantial Completion: Complete following items before requesting Certification of Substantial Completion, either for entire Work or for portions of Work:
  - 1. Submit maintenance manuals, Project record documents, digital images of construction photographs, and other similar final record data in compliance with this Section.
  - 2. Complete facility startup, testing, adjusting, balancing of systems and equipment, demonstrations, and instructions to Owner's operating and maintenance personnel as specified in compliance with this Section.
  - 3. Conduct inspection to establish basis for request that Work is substantially complete. Create comprehensive list (initial punch list) indicating items to be completed or corrected, value of incomplete or nonconforming Work, reason for being incomplete, and date of anticipated completion for each item. Include copy of list with request for Certificate of Substantial Completion.
  - 4. Obtain and submit releases enabling Owner's full, unrestricted use of Project and access to services and utilities. Include certificate of occupancy, operating certificates, and similar releases from authorities having jurisdiction and utility companies.
  - 5. Deliver tools, spare parts, extra stocks of material, and similar physical items to Owner.
  - 6. Make final change-over of locks eliminating construction master-key system and transmit keys directly to Owner. Advise Owner's personnel of change-over in security provisions.
  - 7. Discontinue or change over and remove temporary facilities and services from Project Site, along with construction tools, mockups, and similar elements.
  - 8. Perform final cleaning according to this Section.
- B. Substantial Completion Inspection:
  - 1. When Contractor considers Work to be substantially complete, submit to Architect/Engineer:
    - a. Written certificate that Work, or designated portion, is substantially complete.
    - b. List of items to be completed or corrected (initial punch list).
  - 2. Within seven days after receipt of request for Substantial Completion, Architect/Engineer will make inspection to determine whether Work or designated portion is substantially complete.
  - 3. Should Architect/Engineer determine that Work is not substantially complete:
    - a. Architect/Engineer will promptly notify Contractor in writing, stating reasons for its opinion.
    - b. Contractor shall remedy deficiencies in Work and send second written request for Substantial Completion to Architect/Engineer.
    - c. Architect/Engineer will reinspect Work.
    - d. Redo and Inspection of Deficient Work: Repeated until Work passes Architect/Engineer's inspection.



- e. Owner will withhold Architect/Engineer additional fees associated with re-inspection services, and a deduct change order will be processed, or contractor may pay for services direct.
- 4. When Architect/Engineer finds that Work is substantially complete, Architect/Engineer will:
  - a. Prepare Certificate of Substantial Completion on AIA G704 - Certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified and amended by Architect/Engineer and Owner (final punch list).
  - b. Submit Certificate to Owner and Contractor for their written acceptance of responsibilities assigned to them in Certificate.
- 5. After Work is substantially complete, Contractor shall:
  - a. Allow Owner occupancy of Project under provisions stated in Certificate of Substantial Completion.
  - b. Complete Work listed for completion or correction within time period stipulated.
- C. Prerequisites for Final Completion: Complete following items before requesting final acceptance and final payment.
  - 1. When Contractor considers Work to be complete, submit written certification that:
    - a. Contract Documents have been reviewed.
    - b. Work has been examined for compliance with Contract Documents.
    - c. Work has been completed according to Contract Documents.
    - d. Work is completed and ready for final inspection.
  - 2. Submittals: Submit following:
    - a. Final punch list indicating all items have been completed or corrected.
    - b. Final payment request with final releases and supporting documentation not previously submitted and accepted. Include certificates of insurance for products and completed operations where required.
    - c. Specified warranties, workmanship/maintenance bonds, maintenance agreements, and other similar documents.
    - d. Accounting statement for final changes to Contract Sum.
    - e. Contractor's affidavit of payment of debts and claims on AIA G706 - Contractor's Affidavit of Payment of Debts and Claims.
    - f. Contractor affidavit of release of liens on AIA G706A - Contractor's Affidavit of Release of Liens.
    - g. Consent of surety to final payment on AIA G707 - Consent of Surety to Final Payment Form.
  - 3. Perform final cleaning for Contractor-soiled areas according to this Section.
- D. Final Completion Inspection:
  - 1. Within seven days after receipt of request for final inspection, Architect/Engineer will make inspection to determine whether Work or designated portion is complete.
  - 2. Should Architect/Engineer consider Work to be incomplete or defective:
    - a. Architect/Engineer will promptly notify Contractor in writing, listing incomplete or defective Work.
    - b. Contractor shall remedy stated deficiencies and send second written request to Architect/Engineer that Work is complete.
    - c. Architect/Engineer will reinspect Work.
    - d. Redo and Inspection of Deficient Work: Repeated until Work passes Architect/Engineer's inspection.
    - e. Owner will withhold Architect/Engineer additional fees associated with re-inspection services, and a deduct change order will be processed, or contractor may pay for services direct.

### 1.3 DEMONSTRATION AND INSTRUCTIONS

- A. Demonstrate operation and maintenance of products to Owner's personnel two weeks prior to date of Substantial Completion.
- B. Demonstrate Project equipment and instruct in classroom environment located at Project site and instructed by qualified or manufacturer's representative who is knowledgeable about the Project.
- C. Video Recordings: Provide video recordings of demonstration and instructional sessions.
- D. For equipment or systems requiring seasonal operation, perform demonstration for other season within six months.

- E. Use operation and maintenance manuals as basis for instruction. Review contents of manual with Owner's personnel in detail to explain all aspects of operation and maintenance.
- F. Demonstrate startup, operation, control, adjustment, troubleshooting, servicing, maintenance, and shutdown of each item of equipment at agreed time, at equipment location.
- G. Prepare and insert additional data in operations and maintenance manuals when need for additional data becomes apparent during instruction.

#### 1.4 PROJECT RECORD DOCUMENTS

- A. Maintain on Site one set of the following record documents; record actual revisions to the Work:
  - 1. Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Change Orders and other modifications to the Contract.
  - 5. Reviewed Shop Drawings, product data, and Samples.
  - 6. Manufacturer's instruction for assembly, installation, and adjusting.
- B. Ensure entries are complete and accurate, enabling future reference by Owner.
- C. Store record documents separate from documents used for construction.
- D. Record information concurrent with construction progress, not less than weekly.
- E. Specifications: Legibly mark and record, at each product Section, description of actual products installed, including the following:
  - 1. Manufacturer's name and product model and number.
  - 2. Product substitutions or alternates used.
  - 3. Changes made by Addenda and modifications.
- F. Record Drawings and Shop Drawings: Legibly mark each item to record actual construction as follows:
  - 1. Include Contract modifications such as Addenda, supplementary instructions, change directives, field orders, minor changes in the Work, and change orders.
  - 2. Include locations of concealed elements of the Work.
  - 3. Identify depth of buried utility lines and provide dimensions showing distances from permanent facility components that are parallel to utilities.
  - 4. Dimension ends, corners, and junctions of buried utilities to permanent facility components using triangulation.
  - 5. Identify and locate existing buried or concealed items encountered during Project.
  - 6. Measured depths of foundations in relation to finish first floor datum.
  - 7. Measured horizontal and vertical locations of underground utilities and appurtenances, referenced to permanent surface improvements.
  - 8. Measured locations of internal utilities and appurtenances concealed in construction, referenced to visible and accessible features of the Work.
  - 9. Field changes of dimension and detail.
  - 10. Details not on original Drawings.
- G. Submit PDF electronic files of marked-up documents to Architect/Engineer before Substantial Completion.

#### 1.5 OPERATION AND MAINTENANCE DATA

- A. Submit in PDF composite electronic indexed file.
- B. Submit one data bound in 8-1/2 x 11-inch text pages, three D side ring binders with durable plastic covers.
- C. Prepare binder cover with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS," title of Project, and subject matter of binder when multiple binders are required.
- D. Internally subdivide binder contents with permanent page dividers, logically organized as described below; with tab titling clearly printed under reinforced laminated plastic tabs.
- E. Drawings: Provide with reinforced punched binder tab. Bind in with text; fold larger drawings to size of text pages.
- F. Contents: Prepare table of contents for each volume, with each product or system description identified, typed on white paper, in three parts as follows:
  - 1. Part 1: Directory, listing names, addresses, and telephone numbers of Architect/Engineer, Contractor, Subcontractors, and major equipment suppliers.

2. Part 2: Operation and maintenance instructions, arranged by system and subdivided by Specification Section. For each category, identify names, addresses, and telephone numbers of Subcontractors and suppliers. Include the following:
  - a. Significant design criteria.
  - b. List of equipment.
  - c. Parts list for each component.
  - d. Operating instructions.
  - e. Maintenance instructions for equipment and systems.
  - f. Maintenance instructions for [**special**] finishes, including recommended cleaning methods and materials, and special precautions identifying detrimental agents.
  - g. Safety precautions to be taken when operating and maintaining or working near equipment.
3. Part 3: Project documents and certificates, including the following:
  - a. Shop Drawings and product data.
  - b. Air and water balance reports.
  - c. Certificates.
  - d. Originals of warranties and bonds.

#### 1.6 MANUAL FOR MATERIALS AND FINISHES

- A. Building Products, Applied Materials, and Finishes: Include product data, with catalog number, size, composition, and color and texture designations. Include information for re-ordering custom-manufactured products.
- B. Instructions for Care and Maintenance: Include manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
- C. Moisture Protection and Weather Exposed Products: Include product data listing applicable reference standards, chemical composition, and details of installation. Include recommendations for inspections, maintenance, and repair.
- D. Additional Requirements: As specified in individual product Specification Sections.
- E. Include listing in table of contents for design data, with tabbed fly sheet and space for insertion of data.

#### 1.7 PRODUCT WARRANTIES AND PRODUCT BONDS

- A. Obtain warranties and bonds executed in by responsible Subcontractors, suppliers, and manufacturers within ten days after completion of applicable item of Work.
- B. Execute and assemble transferable warranty documents and bonds from Subcontractors, suppliers, and manufacturers.
- C. Verify documents are in proper form, contain full information, and are notarized.
- D. Co-execute submittals when required.
- E. Submit prior to final Application for Payment.
- F. Time of Submittals:
  1. For equipment or component parts of equipment put into service during construction with Owner's permission, submit documents within ten days after acceptance.
  2. Make other submittals within ten days after date of Substantial Completion, prior to final Application for Payment.
  3. For items of Work for which acceptance is delayed beyond Substantial Completion, submit within ten days after acceptance, listing date of acceptance as beginning of warranty or bond period.

### **PART 2 - PRODUCTS - Not Used**

### **PART 3 - EXECUTION**

#### 3.1 EXAMINATION

- A. Verify that existing Site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Verify that existing substrate is capable of structural support or attachment of new Work being applied or attached.

- C. Examine and verify specific conditions described in individual Specification Sections.
- D. Verify that utility services are available with correct characteristics and in correct locations.

### 3.2 PREPARATION

- A. Clean substrate surfaces prior to applying next material or substance according to manufacturer's instructions.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer-required or -recommended substrate primer, sealer, or conditioner prior to applying new material or substance in contact or bond.

### 3.3 EXECUTION

- A. Comply with manufacturer's installation instructions, performing each step in sequence. Maintain one set of manufacturer's installation instructions at Project Site during installation and until completion of construction.
- B. When manufacturer's installation instructions conflict with Contract Documents, request clarification from Architect/Engineer before proceeding.
- C. Verify that field measurements are as indicated on approved Shop Drawings or as instructed by manufacturer.
- D. Secure products in place with positive anchorage devices designed and sized to withstand stresses, vibration, physical distortion, or disfigurement.
  - 1. Secure Work true to line and level and within specified tolerances, or if not specified, industry-recognized tolerances.
  - 2. Physically separate products in place, provide electrical insulation, or provide protective coatings to prevent galvanic action or corrosion between dissimilar metals.
  - 3. Exposed Joints: Provide uniform joint width and arrange to obtain best visual effect. Refer questionable visual-effect choices to Architect/Engineer for final decision.
- E. Allow for expansion of materials and building movement.
- F. Climatic Conditions and Project Status: Install each unit of Work under conditions to ensure best possible results in coordination with entire Project.
  - 1. Isolate each unit of Work from incompatible Work as necessary to prevent deterioration.
  - 2. Coordinate enclosure of Work with required inspections and tests to minimize necessity of uncovering Work for those purposes.
- G. Mounting Heights: Where not indicated, mount individual units of Work at industry recognized standard mounting heights for particular application indicated.
  - 1. Refer questionable mounting heights choices to Architect/Engineer for final decision.
  - 2. Elements Identified as Accessible to Handicapped: Comply with applicable codes and regulations.
- H. Adjust operating products and equipment to ensure smooth and unhindered operation.
- I. Clean and perform maintenance on installed Work as frequently as necessary through remainder of construction period. Lubricate operable components as recommended by manufacturer.

### 3.4 CUTTING AND PATCHING

- A. Employ skilled and experienced installers to perform cutting and patching.
- B. Submit written request in advance of cutting or altering elements affecting:
  - 1. Structural integrity of element.
  - 2. Integrity of weather-exposed or moisture-resistant elements.
  - 3. Efficiency, maintenance, or safety of element.
  - 4. Visual qualities of sight-exposed elements.
  - 5. Work of Owner or separate contractor.
- C. Execute cutting, fitting, and patching including excavation and fill to complete Work and to:
  - 1. Fit the several parts together, to integrate with other Work.
  - 2. Uncover Work to install or correct ill-timed Work.
  - 3. Remove and replace defective and nonconforming Work.
  - 4. Remove samples of installed Work for testing.
  - 5. Provide openings in elements of Work for penetrations of mechanical and electrical Work.
- D. Execute Work by methods to avoid damage to other Work and to provide proper surfaces to receive patching and finishing.
- E. Cut masonry and concrete materials using masonry saw or core drill.
- F. Restore Work with new products according to requirements of Contract Documents.

- G. Fit Work tight to pipes, sleeves, ducts, conduits, and other penetrations through surfaces.
- H. Maintain integrity of wall, ceiling, or floor construction; completely seal voids.
- I. At penetrations of fire-rated walls, partitions, ceiling, or floor construction, completely seal voids with fire-rated material according to Section 07 84 00 - Firestopping, to full thickness of penetrated element.
- J. Refinish surfaces to match adjacent finishes. For continuous surfaces, refinish to nearest intersection; for assembly, refinish entire unit.
- K. Identify hazardous substances or conditions exposed during the Work to Architect/Engineer for decision or remedy.

### 3.5 PROTECTING INSTALLED CONSTRUCTION

- A. Protect installed Work and provide special protection where specified in individual Specification Sections.
- B. Provide temporary and removable protection for installed products. Control activity in immediate Work area to prevent damage.
- C. Provide protective coverings at walls, projections, jambs, sills, and soffits of openings.
- D. Use durable sheet materials to protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects.
- E. Prohibit traffic or storage upon waterproofed or roofed surfaces. When traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- F. Prohibit traffic from landscaped areas.

### 3.6 FINAL CLEANING

- A. Execute final cleaning prior to final Project assessment.
  - 1. Employ experienced personnel or professional cleaning firm.
- B. Clean interior and exterior glass and surfaces exposed to view; remove temporary labels, stains, and foreign substances; polish transparent and glossy surfaces; and vacuum carpeted and soft surfaces.
- C. Clean equipment and fixtures to sanitary condition with appropriate cleaning materials.
- D. Replace filters of operating equipment.
- E. Clean debris from roofs, gutters, downspouts, and drainage systems.
- F. Clean Site; sweep paved areas, rake clean landscaped surfaces.
- G. Remove waste and surplus materials, rubbish, and construction facilities from Site.

**End Of Section**

## **SECTION 02 42 96 - HISTORIC REMOVAL AND DISMANTLING**

### **PART 1 - GENERAL**

#### **1.1 SUMMARY**

- A. Section includes historic treatment procedures in the form of special types of selective demolition work for designated historic materials.
- B. Related Requirements:
  - 1. Section 01 35 91 "Historic Treatment Procedures" for general historic treatment requirements.

#### **1.2 DEFINITIONS**

- A. Dismantle: To disassemble or detach a historic item from a surface, or a nonhistoric item from a historic surface, using gentle methods and equipment to prevent damage to historic items and surfaces; disposing of items unless indicated to be salvaged or reinstalled.
- B. Existing to Remain: Existing items that are not to be removed or dismantled, except to the degree indicated for performing required Work.
- C. Remove: To take down or detach a nonhistoric item located within a historic space, area, or room, using methods and equipment to prevent damage to historic items and surfaces; disposing of items unless indicated to be salvaged or reinstalled.
- D. Retain: To keep existing items that are not to be removed or dismantled.
- E. Salvage: To protect removed or dismantled items and deliver them to Owner.

#### **1.3 INFORMATIONAL SUBMITTALS**

- A. Qualification Data: For historic removal and dismantling specialist.
- B. Preconstruction Documentation: Show preexisting conditions of adjoining construction and site improvements, including finish surfaces, that might be misconstrued as damage caused by Contractor's removal and dismantling operations.
- C. Removal and Dismantling Historic Treatment Program.
- D. List of Items Indicated to Be Salvaged: Prepare a list of items indicated on Drawings to be salvaged for Owner's use or for reinstallation.
- E. Inventory of Salvaged Items: After removal or dismantling work is complete, submit a list of items that have been salvaged.

#### **1.4 QUALITY ASSURANCE**

- A. Historic Removal and Dismantling Specialist Qualifications: A qualified historic treatment specialist. General selective demolition experience is insufficient experience for historic removal and dismantling work.
- B. Removal and Dismantling Historic Treatment Program: Prepare a written, detailed description of materials, methods, equipment, and sequence of operations to be used for each phase of removal and dismantling work, including protection of surrounding and substrate materials and Project site.
- C. Regulatory Requirements: Comply with notification regulations of authorities having jurisdiction before beginning removal and dismantling work. Comply with hauling and disposal regulations of authorities having jurisdiction.

#### **1.5 FIELD CONDITIONS**

- A. Conditions existing at time of inspection for bidding purpose will be maintained by Owner as far as practical.
  - 1. Before removal and dismantling, Owner will remove the following items:
    - a. None identified.
- B. Notify Architect of discrepancies between existing conditions and Drawings before proceeding with removal and dismantling work.

- C. Hazardous Materials: It is not expected that hazardous materials will be encountered in the Work.
  - 1. If materials suspected of containing hazardous materials are encountered, do not disturb; immediately notify Architect and Owner. Owner will remove hazardous materials under a separate contract.
    - a. In the case of asbestos, stop work in the area of potential hazard, shut off fans and other air handlers ventilating the area, and rope off area until the questionable material is identified. Reassign workers to continue work in unaffected areas. Resume work in the area of concern after safe working conditions are verified.

## **PART 2 - PRODUCTS - (Not Used)**

## **PART 3 - EXECUTION**

### **3.1 EXAMINATION**

- A. Preparation for Removal and Dismantling: Examine construction to be removed or dismantled to determine best methods to safely and effectively perform removal and dismantling work.
  - 1. Verify that affected utilities are disconnected and capped.
  - 2. Inventory and record the condition of items to be removed and dismantled for reinstallation or salvage. Enter this information on the submittal of inventory of salvaged items.
- B. Survey of Existing Conditions: Record existing conditions by use of preconstruction photographs and/or preconstruction video recordings.
- C. Perform surveys as the Work progresses to detect hazards resulting from historic removal and dismantling procedures.

### **3.2 HISTORIC REMOVAL AND DISMANTLING**

- A. General: Have removal and dismantling work performed by a qualified historic removal and dismantling specialist.
- B. Perform work according to the historic treatment program.
- C. Water-Mist Sprinkling: Use water-mist sprinkling and other wet methods to control dust only with adequate, approved procedures and equipment according to the historic treatment program to ensure that such water does not create a hazard or adversely affect other building areas or materials.
- D. Anchorages:
  - 1. Remove anchorages associated with removed items.
  - 2. Dismantle anchorages associated with dismantled items.
  - 3. In nonhistoric surfaces, patch holes created by anchorage removal or dismantling according to the requirements for new work.
  - 4. In historic surfaces, patch or repair holes created by anchorage removal or dismantling according to Section that is specific to the historic surface being patched.

END OF SECTION 02 42 96



## **SECTION 04 03 10 – HISTORIC MASONRY CLEANING**

### **PART 1 - GENERAL**

#### 1.1 SUMMARY

- A. Section includes historic treatment work consisting of cleaning historic clay brick and stone masonry surfaces.

#### 1.2 DEFINITIONS

- A. Low-Pressure Spray: 100 to 400 psi (690 to 2750 kPa); 4 to 6 gpm (0.25 to 0.4 L/s).
- B. Medium-Pressure Spray: 400 to 800 psi (2750 to 5510 kPa); 4 to 6 gpm (0.25 to 0.4 L/s).

#### 1.3 PREINSTALLATION MEETINGS

- A. Preinstallation Conference: Conduct conference on historic masonry cleaning at Project site.
  - 1. Review methods and procedures related to cleaning historic masonry.

#### 1.4 ACTION SUBMITTALS

- A. Product Data: For each type of product.

#### 1.5 QUALITY ASSURANCE

- A. Historic Treatment Specialist Qualifications: A qualified historic masonry cleaning specialist. Experience cleaning new masonry work is insufficient experience for historic treatment work.
- B. Mockups: Prepare mockups of cleaning on existing surfaces to demonstrate aesthetic effects and to set quality standards for materials and execution.
  - 1. Cleaning: Clean an area approximately 25 sq. ft. (2.3 sq. m) for each type of masonry and surface condition.

### **PART 2 - PRODUCTS**

#### 2.1 CLEANING MATERIALS

- A. Water: Potable.
- B. Hot Water: Water heated to a temperature of 140 to 160 deg F (60 to 71 deg C).
- C. Detergent Solution, Job Mixed: Solution prepared by mixing 2 cups (0.5 L) of tetrasodium pyrophosphate (TSPP), 1/2 cup (125 mL) of laundry detergent, and 20 quarts (20 L) of hot water for every 5 gal. (20 L) of solution required.
- D. Mold, Mildew, and Algae Remover, Job Mixed: Solution prepared by mixing 2 cups (0.5 L) of tetrasodium pyrophosphate (TSPP), 5 quarts (5 L) of 5 percent sodium hypochlorite (bleach), and 15 quarts (15 L) of hot water for every 5 gal. (20 L) of solution required.
- E. Nonacidic Gel Cleaner: Manufacturer's standard gel formulation, with pH between 6 and 9, that contains detergents with chelating agents and is specifically formulated for cleaning masonry surfaces.
- F. Nonacidic Liquid Cleaner: Manufacturer's standard mildly alkaline liquid cleaner formulated for removing mold, mildew, and other organic soiling from ordinary building materials, including polished stone, brick, aluminum, plastics, and wood.

### **PART 3 - EXECUTION**

#### 3.1 PROTECTION

- A. Protect aluminum windows and doors.
- B. Remove/reinstall items if possible, otherwise protect during cleaning.
- C. Collect paint and avoid paint chips from entering street and city catch basins.

#### 3.2 CLEANING MASONRY, GENERAL

- A. Proceed with cleaning in an orderly manner; work from top to bottom of each scaffold width and from one end of each elevation to the other. Ensure that dirty residues and rinse water do not wash over dry, cleaned surfaces.
- B. Use only those cleaning methods indicated for each masonry material and location.

1. Brushes: Do not use wire brushes or brushes that are not resistant to chemical cleaner being used.
2. Spray Equipment: Use spray equipment that provides controlled application at volume and pressure indicated, measured at nozzle. Adjust pressure and volume to ensure that cleaning methods do not damage masonry.
  - a. Equip units with pressure gauges.
  - b. For water-spray application, use fan-shaped spray that disperses water at an angle of 25 to 50 degrees.
- C. Perform each cleaning method indicated in a manner that results in uniform coverage of all surfaces, including corners, moldings, and interstices, and that produces an even effect without streaking or damaging masonry surfaces. Keep wall wet below area being cleaned to prevent streaking from runoff.
- D. Water-Spray Application Method: Unless otherwise indicated, hold spray nozzle at least 6 inches (150 mm) from masonry surface, and apply water in horizontal back-and-forth sweeping motion, overlapping previous strokes to produce uniform coverage.

### 3.3 PRELIMINARY CLEANING

- A. Removing Plant Growth: Completely remove visible plant, moss, and shrub growth from masonry surfaces. Carefully remove plants, creepers, and vegetation by cutting at roots and allowing remaining growth to dry as long as possible before removal. Remove loose soil and plant debris from open masonry joints to whatever depth they occur.
- B. Preliminary Cleaning: Before beginning general cleaning, remove extraneous substances that are resistant to planned cleaning methods. Extraneous substances include paint, calking, asphalt, and tar.
  1. Carefully remove heavy accumulations of rigid materials from masonry surface with sharp chisel. Do not scratch or chip masonry surface.
  2. Remove paint and calking with alkaline paint remover.
    - a. Comply with requirements in "Paint Removal" Article.
    - b. Repeat application up to two times if needed.
  3. Remove asphalt and tar with solvent-type paste paint remover.
    - a. Comply with requirements in "Paint Removal" Article.
    - b. Apply paint remover only to asphalt and tar by brush without prewetting.
    - c. Allow paint remover to remain on surface for 10 to 30 minutes.
    - d. Repeat application if needed.

### 3.4 CLEANING MASONRY

- A. Detergent Cleaning:
  1. Wet surface with cold water applied by low-pressure spray.
  2. Scrub surface with detergent solution using medium-soft brushes until soil is thoroughly dislodged and can be removed by rinsing. Use small brushes to remove soil from mortar joints and crevices. Dip brush in solution often to ensure that adequate fresh detergent is used and that surface remains wet.
  3. Rinse with cold water applied by low-pressure spray to remove detergent solution and soil.
- B. Mold, Mildew, and Algae Removal:
  1. Wet surface with cold water applied by low-pressure spray.
  2. Apply mold, mildew, and algae remover by brush or low-pressure spray.
  3. Scrub surface with medium-soft brushes until mold, mildew, and algae are thoroughly dislodged and can be removed by rinsing. Use small brushes for mortar joints and crevices. Dip brush in mold, mildew, and algae remover often to ensure that adequate fresh cleaner is used and that surface remains wet.
  4. Rinse with cold water applied by low-pressure spray to remove mold, mildew, and algae remover and soil.
- C. Nonacidic Gel Chemical Cleaning:
  1. Wet surface with cold water applied by low-pressure spray.
  2. Apply gel cleaner in 1/8-inch (3-mm) thickness by brush, working into joints and crevices. Apply quickly and do not brush out excessively, so area is uniformly covered with fresh cleaner and dwell time is uniform throughout area being cleaned.

3. Let cleaner remain on surface for period recommended in writing by chemical-cleaner manufacturer.
  4. Remove bulk of gel cleaner.
  5. Rinse with cold water applied by low-pressure spray to remove chemicals and soil.
- D. Nonacidic Liquid Chemical Cleaning:
1. Wet surface with cold water applied by low-pressure spray.
  2. Apply cleaner to surface by brush or low-pressure spray.
  3. Let cleaner remain on surface for period recommended in writing by chemical-cleaner manufacturer.
  4. Rinse with cold water applied by low-pressure spray to remove chemicals and soil.

### 3.5 CLEANING UNPOLISHED STONework

- A. Detergent Cleaning:
1. Wet surface with cold water applied by low-pressure spray.
  2. Scrub surface with detergent solution using medium-soft brushes until soil is thoroughly dislodged and can be removed by rinsing. Use small brushes to remove soil from mortar joints and crevices. Dip brush in solution often to ensure that adequate fresh detergent is used and that surface remains wet.
  3. Rinse with cold water applied by low-pressure spray to remove detergent solution and soil.
- B. Mold, Mildew, and Algae Removal:
1. Wet surface with cold water applied by low-pressure spray.
  2. Apply mold, mildew, and algae remover by brush or low-pressure spray.
  3. Scrub surface with medium-soft brushes until mold, mildew, and algae are thoroughly dislodged and can be removed by rinsing. Use small brushes for mortar joints and crevices. Dip brush in mold, mildew, and algae remover often to ensure that adequate fresh cleaner is used and that surface remains wet.
  4. Rinse with cold water applied by low-pressure spray to remove mold, mildew, and algae remover and soil.
- C. Nonacidic Gel Chemical Cleaning:
1. Wet surface with cold water applied by low-pressure spray.
  2. Apply gel cleaner in 1/8-inch (3-mm) thickness by brush, working into joints and crevices. Apply quickly and do not brush out excessively, so area is uniformly covered with fresh cleaner and dwell time is uniform throughout area being cleaned.
  3. Let cleaner remain on surface for period recommended in writing by chemical-cleaner manufacturer.
  4. Remove bulk of gel cleaner.
  5. Rinse with cold water applied by low-pressure spray to remove chemicals and soil.
- D. Nonacidic Liquid Chemical Cleaning:
1. Wet surface with cold water applied by low-pressure spray.
  2. Apply cleaner to surface by brush or low-pressure spray.
  3. Let cleaner remain on surface for period recommended in writing by chemical-cleaner manufacturer.
  4. Rinse with cold water applied by low-pressure spray to remove chemicals and soil.

### 3.6 FIELD QUALITY CONTROL

- A. Manufacturer's Field Service: Engage paint-remover manufacturer's and chemical-cleaner manufacturer's factory-authorized service representatives for consultation and Project-site inspection and provide on-site assistance when requested by Architect. Have paint-remover manufacturer's and chemical-cleaner manufacturer's factory-authorized service representatives visit Project site not less than twice to observe progress and quality of the Work.

**END OF SECTION 04 03 10**

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