

PROJECT MANUAL NUMBER_____
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**PROJECT MANUAL  
for  
EXTERIOR WALL REPAIR  
BLDGS. 3600, 3800, & 3810  
Camp Gilbert C. Grafton  
Devils Lake, North Dakota**

Bids will be received by The Adjutant General in Bldg 030 at Fraine Barracks, Bismarck, North Dakota until 2:00 PM, December 19, 2017.

Bidding documents referred to herein upon which all bids for construction work shall be based are as follows:

Three Architectural Sheets A3.1, A3.2, and A3.3, all dated June 27, 2017.

Specifications and sections included in accordance with Table of Contents and any Addenda issued prior to opening of bids.

**CONTRACTING OFFICER**

Brig Gen Robert J. Becklund  
Deputy Adjutant General  
State of North Dakota  
Bismarck, ND 58506-5511  
Phone: (701) 333-2068  
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**ARCHITECT**

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DATED: 20 November 2017



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NOTE: Listing of specifications under specific construction categories does not relieve the Contractors from becoming familiar with all specifications affecting his work.



INVITATION TO BID

**EXTERIOR WALL REPAIR  
BLDGS. 3600, 3800, & 3810  
Camp Gilbert C. Grafton  
Devils Lake, North Dakota**

Sealed bids for Exterior Wall Repair, Bldgs. 3600, 3800, & 3810, Camp Gilbert C. Grafton, Devils Lake, North Dakota will be received by the Adjutant General of the State of North Dakota at Fraine Barracks, Building 030, Bismarck, North Dakota, at 2:00 PM, December 19, 2017, and will be opened and publicly read that date and hour in the space designated. All bids received after the scheduled opening time will be returned to the bidders unopened.

A single bid will be received for Total Construction work (IFB 18-04)

ATTENTION PERSONS WITH DISABILITIES: If you plan to attend the bid opening and will need special facilities or assistance relating to a disability, please contact the National Guard ADA Coordinator at 701-333-2296 by December 12, 2017.

Contractors desiring to submit a bid may obtain a copy of the contract documents at the office of the Owner. No deposit for the contract documents will be required, but they must be returned to the Owner in unmutilated condition within ten (10) days after the opening of bids. Copies of the proposed contract documents are limited to one (1) set per bidder. **Requests must be made on Contractor's own letterhead and must include a copy of his North Dakota Contractor's License or Certificate of Renewal, whichever is current.**

**OWNER**

**Office of the Adjutant General  
Contract Management Branch  
P.O. Box 5511  
Bismarck, North Dakota 58506-5511  
Telephone: (701) 333-2068**

Copies of the contract documents are on file at the Construction Plans Exchange in Bismarck; Builders Exchanges in Dickinson, Fargo, Grand Forks, Mandan, and Minot, North Dakota; Impact Procurement Technical Assistance Center, Fargo, North Dakota, Minnesota Builders Exchange in Minneapolis, Minnesota, and at the offices of the Architect and the Owner.

Each bid shall be submitted in duplicate copy on the forms provided by the Owner and enclosed in a sealed opaque envelope upon which there is disclosed the necessary information as required by Supplementary Instructions to Bidders.

Each bid shall be accompanied by a separate sealed opaque envelope containing a bidder's bond made payable to The Adjutant General, State of North Dakota, and executed by the bidder as principle and by a surety company authorized to do business in North Dakota, in a sum equal to five percent (5%) of the bidder's highest total bid combination, including all add alternates to the bid items; conditioned that if bidder's proposal be accepted and the contract awarded to him, he within ten (10) days after notice of such award, will effect and execute a contract in accordance with the terms of his bid and a contractor's bond as required by law and the regulations and determinations of the Owner. AIA Document A310, Bid Bond, will be furnished by the Owner and should be used to execute the bid guarantee.

In compliance with Section 43-07-12 of the North Dakota Century Code, each contractor submitting a bid must have a copy of his North Dakota Contractor's License or certificate of renewal thereof issued by the secretary of state enclosed in the bid bond envelope; must be licensed for the highest amount of his total bid combination including add alternates; and such license must have been in effect at least ten (10) days prior to the date of the bid opening.

No bid will be read or considered which does not fully comply with the provisions herein as to bonds and licenses, and any deficient bid submitted will be resealed and returned to bidder immediately.

The Owner reserves the right to hold all legitimate bids for a period of thirty (30) days after the date fixed for the opening thereof. It is the intent of the Owner to award a contract to the lowest and best bidder. The Owner further reserves the right to reject any and all bids and to waive irregularities, and shall incur no legal liability for the State for the payment of any monies until the contract is awarded and approved by the proper authorities.

In compliance with Section 48-01.2-10 of the North Dakota Century Code, the successful bidder shall be required to furnish bonds covering the faithful performance of the Contract and the payment of all obligations thereunder, and all additional obligations required by the laws of the state of North Dakota. Each bond shall be in an amount equal to the full contract sum.

DATED: 20 November 2017

OFFICE OF THE ADJUTANT GENERAL  
Bismarck, North Dakota

By: /s/ ROBERT J. BECKLUND  
Brigadier General, NDNG  
Deputy Adjutant General  
Contracting Officer

# **AIA<sup>®</sup> Document A701<sup>™</sup> – 1997**

## ***Instructions to Bidders***

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

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

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

### **TABLE OF ARTICLES**

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

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

## **ARTICLE 1 DEFINITIONS**

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 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, deletions, clarifications or corrections.

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

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

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

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

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

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

## **ARTICLE 2 BIDDER'S REPRESENTATIONS**

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates 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.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 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.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

## **ARTICLE 3 BIDDING DOCUMENTS**

### **§ 3.1 COPIES**

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.



**§ 3.1.2** Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

**§ 3.1.3** 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 of incomplete sets of Bidding Documents.

**§ 3.1.4** The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

### **§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS**

**§ 3.2.1** The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

**§ 3.2.2** Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

**§ 3.2.3** 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.

### **§ 3.3 SUBSTITUTIONS**

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

**§ 3.3.2** No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten 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 the 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.

**§ 3.3.3** 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.

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

### **§ 3.4 ADDENDA**

**§ 3.4.1** Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

**§ 3.4.2** Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

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

**§ 3.4.4** Each Bidder 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.

## **ARTICLE 4 BIDDING PROCEDURES**

### **§ 4.1 PREPARATION OF BIDS**

**§ 4.1.1** Bids shall be submitted on the forms included with the Bidding Documents.

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

**§ 4.1.3** Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

**§ 4.1.4** Interlineations, alterations and erasures must be initialed by the signer of the Bid.

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

**§ 4.1.6** Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

**§ 4.1.7** Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

### **§ 4.2 BID SECURITY**

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

**§ 4.2.2** If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

**§ 4.2.3** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

### **§ 4.3 SUBMISSION OF BIDS**

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

**§ 4.3.2** Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

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

**§ 4.3.4** Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

### **§ 4.4 MODIFICATION OR WITHDRAWAL OF BID**

**§ 4.4.1** 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.

**§ 4.4.2** Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

**§ 4.4.3** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

**§ 4.4.4** Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

## **ARTICLE 5 CONSIDERATION OF BIDS**

### **§ 5.1 OPENING OF BIDS**

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

### **§ 5.2 REJECTION OF BIDS**

The Owner shall have the right to reject any or all Bids. 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.

### **§ 5.3 ACCEPTANCE OF BID (AWARD)**

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest 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 irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

**§ 5.3.2** The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

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

### **§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT**

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

### **§ 6.2 OWNER'S FINANCIAL CAPABILITY**

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

### **§ 6.3 SUBMITTALS**

**§ 6.3.1** 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:

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

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

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder 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 an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate 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.

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

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

### **§ 7.1 BOND REQUIREMENTS**

**§ 7.1.1** If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

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

**§ 7.1.3** If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

### **§ 7.2 TIME OF DELIVERY AND FORM OF BONDS**

**§ 7.2.1** The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to 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 with this Section 7.2.1.

**§ 7.2.2** Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

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

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

## **ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR**

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.

# SUPPLEMENTARY INSTRUCTIONS TO BIDDERS

THESE SUPPLEMENTARY INSTRUCTIONS TO BIDDERS CONTAIN CHANGES AND ADDITIONS TO AIA DOCUMENT A701, CROSS REFERENCED TO THE ORIGINAL ARTICLE NUMBER IN AIA DOCUMENT A701. WHERE ANY PART OF AIA DOCUMENT A701 IS NOT MODIFIED OR VOIDED BY THESE SUPPLEMENTARY INSTRUCTIONS TO BIDDERS, THE UNALTERED PART REMAINS IN AFFECT.

## ARTICLE 2

### BIDDER'S REPRESENTATIONS

#### ADD THE FOLLOWING SUBPARAGRAPHS AND PARAGRAPH:

2.1.5 The prices in this Bid have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor.

2.1.6 Unless otherwise required by law, the prices which have been quoted in this Bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to bid opening, directly or indirectly, to any other Bidder or to any competitor.

2.1.7 No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a Bid for the purpose of restricting competition.

#### 2.2 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

2.2.1 The Bidder acknowledges that the Bidder has taken steps reasonably necessary to ascertain the nature and location of the Work, and that the Bidder has investigated and is satisfied as to the general and local conditions which can affect the Work or its cost, including but not limited to

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, water, electric power, and roads;
- .3 uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- .4 the conformation and conditions of the ground; and
- .5 the character of equipment and facilities needed preliminary to and during work performance.

2.2.2 The Bidder also acknowledges that the Bidder has is satisfied as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Owner, as well as from the drawings and specifications made a part of the Bidding Documents. Any failure of the Bidder to take the actions

described and acknowledged in this paragraph will not relieve the Bidder from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

2.2.3 The Owner assumes no responsibility for any conclusions or interpretations made by the Bidder based on the information made available by the Owner. Nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this Contract.

## ARTICLE 3

### BIDDING DOCUMENTS

#### SUBPARAGRAPH 3.2.2: MODIFY CONTENT BY CHANGING IT TO READ:

3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of Bidding Documents shall make a written or verbal request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

#### PARAGRAPH 3.2: ADD THE FOLLOWING SUBPARAGRAPH:

3.2.4 Where a clear understanding of the work is prevented due to contradictions between the drawings and the specifications, and there is not sufficient time to make an interpretation, correction, or change as per subparagraph 3.2.3, the Bidder shall consider the more restrictive conditions as governing and/or shall bid the larger quantity or better quality of work. Appropriate adjustment, if required, will be made after contract award.

#### SUBPARAGRAPH 3.3.4: MODIFY CONTENT BY CHANGING IT TO READ:

3.3.4 No substitutions will be considered after the Contract award unless specifically provided in the Contract Documents. Under no condition, shall bids be submitted on work or materials not approved by Architect for this specific project, even though approval might have been given on other projects previously.

**PARAGRAPH 3.3: ADD THE FOLLOWING SUBPARAGRAPHS:**

3.3.5 Those requesting Architect consideration of their products as "equal" in accord with subparagraph 3.3.2, shall make such request in electronic PDF format providing space for Architect approval and/or comments on each item requested. An electronic PDF copy of the request form, with Architect action on same, will be returned to the proposer.

3.3.6 Bidders and Sub-bidders submitting proposals on individually specified items of Work or on Work included in complete Specification sections, must quote in accord with all requirements of Plans and Specifications without modification or exclusion.

**SUBPARAGRAPH 3.4.3: MODIFY CONTENT BY CHANGING IT TO READ:**

3.4.3 No Addenda will be issued later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids, or one which includes postponement of the date for receipt of Bids, or one which includes additional prior approvals, or one which is essential to the bidding process.

**SUBPARAGRAPH 3.4.4: MODIFY CONTENT BY CHANGING IT TO READ:**

3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge receipt of all Addenda on the Bid Form. Failure to acknowledge all Addenda may cause rejection of Bid.

## **ARTICLE 4**

### **BIDDING PROCEDURES**

**SUBPARAGRAPH 4.1.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

4.1.1 Bids shall be submitted in duplicate copy on forms provided by the Owner, a sample of which is included with the Bidding Documents. Owner shall furnish said forms to all registered planholders approximately seven (7) calendar days prior to date of Bid Opening.

**SUBPARAGRAPH 4.2.1: MODIFY CONTENT BY CHANGING IT TO READ:**

4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the advertisement or Invitation to Bid. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all

obligations arising thereunder and all additional obligations required by the laws of the state of North Dakota. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with paragraph 6.2.

**SUBPARAGRAPH 4.2.2: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

4.2.2 If a surety bond is required, it may be secured through the Bidder's usual sources provided the surety is licensed to do business in the state of North Dakota. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the attorney-in-fact's power of attorney. AIA Document A310, Bid Bond, will be provided by the Owner and should be used to execute the surety bond.

**SUBPARAGRAPH 4.3.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

4.3.1 All copies of the Bid (NOT TO INCLUDE the Bid Security and Contractor's License) shall be enclosed in a sealed opaque envelope addressed to the party receiving Bids and shall have disclosed upon it the following information:

- .1 The name and address of the person, firm, or corporation submitting the Bid.**
- .2 Project name.**
- .3 Bid Invitation No. (IFB No.)**
- .4 Type of Bid (i.e. Total Construction, General, Mechanical, Electrical, etc.)**

If a Bidder is submitting more than one type of Bid (i.e. Total Construction and General, Mechanical, or Electrical, etc.) each type of Bid must be submitted as a separate Bid in conformance with the requirements of this paragraph 4.3.1. Bid security shall accompany the Bid and shall be enclosed in a separate sealed opaque envelope, plainly marked on the outside of envelope as to which Bid it is submitted in conjunction with. If the Bid and Bid Security are sent by mail, both sealed envelopes shall be enclosed in a separate mailing envelope with the notation "SEALED BID & BID SECURITY ENCLOSED," on the face thereof. A copy of the Bidder's North Dakota Contractor's License or Certificate of Renewal thereof issued by Secretary of State must be enclosed with the bid security in the required bid security envelope. A Bid submitted without said certificate properly enclosed in the bid security envelope shall not be read or considered and shall be returned to the Bidder.

**PARAGRAPH 4.3: ADD THE FOLLOWING SUBPARAGRAPH:**

4.3.5 Any Bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it is determined by the Owner that the late receipt was due solely to mishandling by the Owner after receipt at the Owner's installation.

**SUBPARAGRAPH 4.4.2: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by written notice to the party receiving Bids at the place designated for receipt of Bids. The modification or withdrawal must contain the signature of an individual authorized to make such modification or withdrawal. A modification or withdrawal may be submitted by facsimile machine to FAX No. 701-333-2067. The facsimile signature will be considered an original signature and written confirmation by mail is not required. A MODIFICATION SHALL BE SO WORDED AS NOT TO REVEAL THE AMOUNT OF THE ORIGINAL BID.

**SUBPARAGRAPH 4.4.4: MODIFY CONTENT BY CHANGING IT TO READ:**

4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as modified or resubmitted.

**PARAGRAPH 4.4: ADD THE FOLLOWING SUBPARAGRAPH:**

4.4.5 Any modification or withdrawal of a Bid is subject to the same conditions as in subparagraph 4.3.5 except that a late modification of an otherwise successful Bid that makes its terms more favorable to the Owner will be considered at any time it is received and may be accepted.

## **ARTICLE 5**

### **CONSIDERATION OF BIDS**

**PARAGRAPH 5.3: MODIFY CONTENT BY CHANGING THE FOLLOWING SUB-PARAGRAPHS TO READ:**

5.3.1 It is the intent of the Owner to award a Contract to the lowest and best 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 irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

5.3.2 The Owner shall have the right to accept Bid Items and Alternates in any order or combination, unless otherwise specifically provided in the Specifications, and to determine the lowest and best Bidder on the basis of the sum of the Bid Items and Alternates accepted.

**ADD THE FOLLOWING SUBPARAGRAPH:**

5.3.3 If this Contract is funded in whole or in part with federal funds, the Owner shall not make any award or permit any award (subcontract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 "Debarment and Suspension".

## **ARTICLE 7**

### **PERFORMANCE BOND AND PAYMENT BOND**

**SUBPARAGRAPH 7.1.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

7.1.1 If stipulated in the Invitation to Bid, the Bidder shall furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder. Such bonds must cover all additional obligations required by the laws of the state of North Dakota.

**SUBPARAGRAPH 7.1.3: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

7.1.3 Required performance and payment bonds shall be secured through a surety licensed to do business within the state of North Dakota. If any surety upon any bond furnished in connection with the Contract becomes unacceptable to the state of North Dakota, or if any such surety fails to furnish reports as to the financial conditions of the surety from time to time as requested by the state of North Dakota, or if the Contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the state of North Dakota and of persons supplying labor or materials in the prosecution of the Work contemplated by this Contract.

**PARAGRAPH 7.1: ADD THE FOLLOWING SUBPARAGRAPH:**

7.1.4 Companies executing the bond as sureties must be among those appearing in the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.

**PARAGRAPH 7.2: MODIFY CONTENT BY CHANGING THE FOLLOWING SUB-PARAGRAPHS TO READ:**

7.2.1 The Bidder shall deliver the required bonds to the Owner within ten days of notification of award of a contract for the Work. 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 with this subparagraph.

7.2.3 The bonds shall be dated the same as the date of the Contract.

## **ARTICLE 9**

### **SUPPLEMENTARY INSTRUCTIONS**

**ARTICLE 9: ADD THE FOLLOWING PARAGRAPHS:**

#### **9.1 CONTRACTOR REQUIREMENTS**

9.1.1 In compliance with Section 43-07-12 of the North Dakota Century Code, each Bidder submitting a Bid must have a state Contractor's License for the highest amount of the Bidder's total Bid combination, including add alternates, and such license must have been in effect at least ten (10) days prior to the date of Bid Opening.

9.1.2 The following submissions will be required from the successful Bidder prior to execution of the Contract:

- .1 Performance Bond and Payment Bond as required by the Invitation to Bid.
- .2 Certificate of Premium Payment to North Dakota Workforce Safety and Insurance.
- .3 Certificate of Insurance in such amounts as prescribed in the Supplementary General Conditions of the Contract for Construction (AGND Document 415).
- .4 Statement of North Dakota Tax Commissioner relating to income tax and sales tax clearance.
- .5 Data Universal Numbering System (DUNS) Number on contracts over \$25,000 (for compliance with the Federal Funding Accountability and Transparency Act of 2006).

9.1.3 Prior to the start of any work, to include the shipping of any materials, Builder's "All Risk" Insurance shall be effected and maintained in such amount as prescribed in the Supplementary General Conditions of the Contract for Construction (AGND Document 415).

9.1.4 A pre-construction conference will be held at the job site prior to commencement of work to fully inform Contractor of the administrative requirements associated with this Contract and to coordinate construction operations in general. The Contractor will be notified of the date and time of said conference. The Contractor or the Contractor's representative along with representatives

from the major subcontractors as specified by Owner and/or Architect will be required to attend.

#### **9.2 SUBCONTRACTOR REQUIREMENTS**

9.2.1 All Subcontractors and Sub-subcontractors submitted in accordance with Paragraph 6.3 of Instructions to Bidders (AIA Document A701) whose subcontract cost, value, or price exceeds the sum of \$2,000.00 shall have in possession at the time of said submittal, a current North Dakota Contractor's License in compliance with the limits as specified in Section 43-07-05 of the North Dakota Century Code.

9.2.2 The following submissions will be required from every Subcontractor and Sub-subcontractor prior to employment on the job site:

- .1 Subcontractor Statement and Acknowledgment, AGND Document 435S, acknowledging that the terms and conditions of the Contract Documents are incorporated into and made a part of their subcontract.
- .2 Certificate of Premium Payment to North Dakota Workforce Safety and Insurance.
- .3 Statement of North Dakota Tax Commissioner relating to income tax and sales tax clearance.
- .4 Copy of North Dakota Contractor's License or Certificate of Renewal, whichever is applicable, as per subparagraph 9.2.1.

#### **9.3 LIQUIDATED DAMAGES**

9.3.1 A liquidated damages clause is set forth in this Contract. Refer to the Supplementary General Conditions (AGND Document 415) for liquidated damages that may be assessed under this Contract.

#### **9.4 RESIDENT CONTRACTOR PREFERENCE**

9.4.1 Selection of successful Bidder and award of Contract will be subject to North Dakota Century Code 44-08-01 which states in part that state agencies shall, in contracting to build or repair any building, structure, road, or other real property, give preference to contractors resident in North Dakota. The preference shall be equal to the preference given or required by the state of the nonresident contractor.

#### **9.5 PRE-BID CONFERENCE**

9.5.1 If stipulated in the Invitation to Bid, a pre-bid conference will be held for the purpose of considering questions posed by the Bidders. The exact location and time of the conference will be announced to all Bidders of record.

#### **9.6 SITE VISITATION**

9.6.1 Visits to the work site may be arranged during duty hours, 8:00 AM to 4:00 PM, Monday through Friday, by contacting the office of the Director of Facilities Engineering, Bldg 030, Fraine Barracks, Bismarck, North Dakota. Telephone: (701) 333-2066.



TOTAL CONSTRUCTION  
INVITATION NO: IFB 18-04

Office of the Adjutant General  
ATTN: NGND-DFE-CM  
030 Fraine Barracks Lane (58504)  
P.O. Box 5511  
Bismarck, North Dakota 58506-5511

19 December 2017

The undersigned being familiar with the local conditions affecting the cost of the work, and after careful and complete examination of the Invitation to Bid, Instructions to Bidders, Bid Form, and Contract Documents; including Contract, General and Additional Conditions, Specifications, and Drawings as prepared by Mutchler Bartram Architects, Fargo, North Dakota and their consultants; and Office of the Adjutant General, Division of Facilities Engineering; and issued Addenda No.'s \_\_\_\_\_; hereby proposes to furnish all labor, materials, equipment and services required for Exterior Wall Repair, Bldgs. 3600, 3800, & 3810, Camp Gilbert C. Grafton, Devils Lake, North Dakota, in accordance with the following:

BID ITEM NO. 1: (Exterior Wall Repair, Bldg 3600):

\_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

BID ITEM NO. 2: (Exterior Wall Repair, Bldg 3800):

\_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

BID ITEM NO. 3: (Exterior Wall Repair, Bldg 3810):

\_\_\_\_\_  
\_\_\_\_\_ Dollars \$ \_\_\_\_\_

The undersigned agrees to start and complete all work within the time limits set forth in Construction Schedule section of the specifications.

<The remainder of this page intentionally left blank.>



TOTAL CONSTRUCTION  
INVITATION NO: IFB 18-04 (con't)

Accompanying this bid, but in a separate sealed envelope, is a bidder's bond in a sum equal to five percent (5%) of the total bid, including all add alternates, which shall be forfeited to the Owner should the bidder fail to effect a contract and deliver Surety Bonds and other documents required by Instructions to Bidders within ten (10) days after receipt of notice to award.

In submitting this bid, it is understood that the right is reserved by the Owner to reject any or all bids, and it is agreed that this bid may not be withdrawn for a period of thirty (30) days after the opening of bids.

In compliance with the laws of the State of North Dakota, the undersigned is a licensed contractor duly registered with the Secretary of State under License Number \_\_\_\_\_, Class \_\_\_\_\_, which license has been renewed or granted on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

The names of all persons interested in the foregoing bid as principals are:

*(NOTE: If bidder or other interested person is a corporation, give legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of firm and names of all individual co-partners composing the firm; if bidder or other interested person is an individual, give first and last names in full.)*

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

Respectfully submitted,

FIRM: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature)

TITLE: \_\_\_\_\_

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

(Include P.O. Box No.)

\_\_\_\_\_

\_\_\_\_\_

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

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_



# AIA<sup>®</sup> Document A310<sup>™</sup> – 2010

## ***Bid Bond***

**CONTRACTOR:**

*(Name, legal status and address)*

**SURETY:**

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

**OWNER:**

*(Name, legal status and address)*

**BOND AMOUNT:** \$

**PROJECT:**

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

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

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

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

**ADDITIONS AND DELETIONS:**

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

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

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

Init.



Signed and sealed this    day of    ,

_____	_____
(Witness)	(Contractor as Principal) (Seal)
_____	_____
	(Title)
_____	_____
	(Surety) (Seal)
_____	_____
(Witness)	(Title)

Init.

/





(Bid Bond Con't)

ACKNOWLEDGMENT OF PRINCIPAL (INDIVIDUAL)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who is described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

(SEAL)

\_\_\_\_\_  
(Notary Public)

ACKNOWLEDGMENT OF PRINCIPAL (PARTNERSHIP)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally appeared \_\_\_\_\_, a member of the co-partnership of \_\_\_\_\_, known to me to be the person who is described in and who executed the foregoing instrument and acknowledged to me that he executed the same as and for the act and deed of the said co-partnership.

(SEAL)

\_\_\_\_\_  
(Notary Public)

ACKNOWLEDGMENT OF PRINCIPAL (CORPORATION)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

(SEAL)

\_\_\_\_\_  
(Notary Public)

ACKNOWLEDGMENT OF SURETY (ATTORNEY-IN-FACT)

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the Attorney-in-Fact of \_\_\_\_\_, the company described in and which executed the foregoing instrument; and acknowledged to me that he signed said instrument as Attorney-in-Fact of the said company and subscribed the name of \_\_\_\_\_, thereof as surety, and his own name as Attorney-in-Fact.

(SEAL)

\_\_\_\_\_  
(Notary Public)



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

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

**AGREEMENT** made as of the    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)

The Owner and Contractor agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

AIA Document A201<sup>™</sup>–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

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

Date of commencement shall be the date of Contractor's receipt of Notice to Proceed.

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

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

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

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

The completion date is based on Contractor receiving Notice to Proceed by, as per subparagraph .01 of Specification Section 01100, Summary of Work.

#### Portion of Work

#### Substantial Completion Date

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

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

Scheduled completion date carries a liquidated damages clause which is referenced in Article 13 of Supplementary General Conditions of the Contract for Construction (AGND Document 415).

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

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

§ 4.3 Unit prices, if any:

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

#### Item

#### Units and Limitations

#### Price Per Unit (\$0.00)

§ 4.4 Allowances included in the Contract Sum, if any:

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

#### Item

#### Price

### 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:

The period covered by each Application for Payment shall be one calendar month ending on the TWENTIETH day of the month NOT the last day of the month, except the month of June.

§ 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 certified amount 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 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.)*

The Owner requires THIRTY days AFTER Owner's receipt of Certificate of Payment from the Architect/Engineer

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for processing and issuing payment.

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, 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** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of TEN percent ( 10.00 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of TEN percent ( 10.00 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

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

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

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

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

Applications for payment shall reflect retainage equal to 10% of Contractor's Application for Payment until the contract is 50% complete. When 95% complete, up to 95% of the amount previously retained may be paid at the discretion of the Architect/Engineer.

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

## **§ 5.2 FINAL PAYMENT**

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 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:

The Owner's final payment to the Contractor shall be made no later than 30 days AFTER THE OWNER'S RECEIPT of the Architect's final Certificate of Payment.

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 INITIAL DECISION MAKER**

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

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

### **§ 6.2 BINDING DISPUTE RESOLUTION**

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

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

Reference AGND Document 415, Supplementary General Conditions of the Contract for Construction; Article 15, Claims and Disputes; paragraph 15.3.

## **ARTICLE 7 TERMINATION OR SUSPENSION**

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

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

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

**§ 8.2** Payments due and unpaid under the Contract shall bear 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.)*

Interest rates shall be in accordance with paragraph 13.6 of Supplementary General Conditions of the Contract for Construction (AGND Document 415)

**§ 8.3** The Owner's representative:

*(Name, address and other information)*

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

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

§ 8.6 Other provisions:

None

#### ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
AGND Document 415	Supplementary General Conditions of the Contract for Construction	December 2010	1 - 10
AGND Document 419	Federal Provisions	January 2011	1 - 2

§ 9.1.4 The Specifications:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

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



§ 9.1.6 The Addenda, if any:

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

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

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

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

Number	Title	Date
IFB	Invitation to Bid	
AIA Document 701	Instructions to Bidders	1997 Edition
AGND Document 411	Supplementary Instructions to Bidders	June 2011 Edition
N/A	Contractor's Bid Form	
N/A	Contractor's Bid Bond	

**ARTICLE 10 INSURANCE AND BONDS**

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)*

Type of insurance or bond	Limit of liability or bond amount (\$0.00)
Performance Bond	Equal to Contract Amount
Payment Bond	Equal to Contract Amount

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)

Init.

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User Notes:

(3B9ADA2A)



# **AIA**® Document A201™ – 2007

## ***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)

### **TABLE OF ARTICLES**

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- 13 MISCELLANEOUS PROVISIONS**
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT**
- 15 CLAIMS AND DISPUTES**

### **ADDITIONS AND DELETIONS:**

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

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

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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 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 and certify termination of the Agreement under Section 14.2.2.

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

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

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

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

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

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

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

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

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

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

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

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

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

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

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

### **§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents 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.

### **§ 3.6 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 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 ALLOWANCES**

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

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

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .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 furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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



### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

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

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

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

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

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

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

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

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

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

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

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

### **§ 3.15 CLEANING UP**

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

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

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** To the fullest extent permitted by law the Contractor shall 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 Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

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

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

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

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

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

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

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

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

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

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

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

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

be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

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

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

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

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

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

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

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

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

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

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

#### **§ 6.2 MUTUAL RESPONSIBILITY**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

### **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

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

### **§ 7.1 GENERAL**

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

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

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

### **§ 7.2 CHANGE ORDERS**

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

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

### **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

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

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

.4 As provided in Section 7.3.7.

**§ 7.3.4** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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



## ARTICLE 8 TIME

### § 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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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

#### § 9.4 CERTIFICATES FOR PAYMENT

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

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

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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

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

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

## **§ 9.6 PROGRESS PAYMENTS**

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

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

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

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

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

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

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

## **§ 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' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended

appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

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

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

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

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

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

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

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

#### § 10.3 HAZARDOUS MATERIALS

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

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

**§ 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 materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

#### **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor 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 LIABILITY INSURANCE**

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

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

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

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

## **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

## **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

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

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

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

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or



otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **§ 11.3.2 BOILER AND MACHINERY INSURANCE**

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

#### **§ 11.3.3 LOSS OF USE INSURANCE**

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

**§ 11.3.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

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

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

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

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

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

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

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

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

### **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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

#### **§ 12.2 CORRECTION OF WORK**

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

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

##### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

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

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

§ 12.2.2.3 The one-year period for correction of Work shall 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

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

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

## **§ 13.5 TESTS AND INSPECTIONS**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

**§ 13.5.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

## **§ 13.6 INTEREST**

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

## **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

## **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 or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

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

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

## § 14.2 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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 above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

## § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

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

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

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

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

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

### 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, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must 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 CONTINUING CONTRACT PERFORMANCE

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

##### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

##### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

#### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 15.2 INITIAL DECISION**

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

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

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

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

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

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

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 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 15.1.6 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 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. 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 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an



additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

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# SUPPLEMENTARY GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

THESE SUPPLEMENTARY GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION CONTAIN CHANGES AND ADDITIONS TO AIA DOCUMENT A201, CROSS REFERENCED TO THE ORIGINAL ARTICLE NUMBERS IN AIA DOCUMENT A201. WHERE ANY PART OF AIA DOCUMENT A201 IS NOT MODIFIED OR VOIDED BY THESE SUPPLEMENTARY GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION, THE UNALTERED PART REMAINS IN EFFECT.

## ARTICLE 1

### GENERAL PROVISIONS

#### PARAGRAPH 1.2: ADD THE FOLLOWING SUBPARAGRAPH:

1.2.4 Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

## ARTICLE 3

### CONTRACTOR

#### PARAGRAPH 3.1: ADD THE FOLLOWING SUBPARAGRAPH:

3.1.4 If the Contractor hereunder is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

#### SUBPARAGRAPH 3.3.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such construction means, methods, techniques, sequences or procedures. If the Contractor determines that such construction means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further

written instructions from the Architect, as approved by the Owner. If the Contractor is then instructed to proceed with the required construction means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

#### PARAGRAPH 3.4: ADD THE FOLLOWING SUBPARAGRAPHS:

3.4.4 Except where a preference or discrimination is prohibited elsewhere in these Contract Documents, in connection with the performance of work under this Contract, the Contractor must give preference to the employment of bona fide North Dakota residents, as determined by NDCC 54-01-26, with preference given first to honorably discharged disabled veterans and veterans of the armed forces of the United States, as defined in NDCC 37-19.1-01, who are deemed to be qualified in the performance of said work.

3.4.5 Price and quality being equal or better, the Contractor must purchase materials manufactured or produced in the state of North Dakota, or materials manufactured or produced in part in North Dakota, for use on this project.

#### PARAGRAPH 3.5: ADD THE FOLLOWING SUBPARAGRAPHS:

3.5.1 The Contractor shall furnish to the Architect, when requested, material certifications on manufactured items to be used on this project.

3.5.2 The Contractor shall guarantee and maintain the stability of all work and materials and keep same in perfect 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, such guarantee shall continue for a period of one year from the date the Owner takes possession.

3.5.3 Defects of any kind, due to faulty work or materials appearing during the above-mentioned period must be immediately made good by the Contractor at the Contractor's own expense to the entire satisfaction of the Owner and Architect. 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 thereto. Where equipment is required to be replaced, the one-year warranty shall be reinstated for that piece of equipment from date of replacement.

3.5.4 The guarantee shall 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 any responsibilities during the guarantee period.

3.5.5 This guarantee shall be extended where other guarantees for different lengths of time are specifically called for in the Contract Documents or where manufacturer's standard warranties extend for a longer period.

**SUBPARAGRAPH 3.7.2: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work. Where the Contract Documents require Work better than that required by statute, the Contract Documents shall govern.

**PARAGRAPH 3.10: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

**3.10 CONTRACTOR'S CONSTRUCTION SCHEDULE**

3.10.1 The Contractor shall, within ten days after Contract award or another period of time determined by the Owner and Architect, prepare and submit to the Architect for approval, three copies of a practicable schedule showing by written description, the order in which the Contractor proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period.

3.10.2 The schedule shall not exceed the time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project or by the Architect, shall be related to the entire Project to the extent required by the Contract Documents, shall provide for expeditious and practicable execution of the Work and shall allow the Architect reasonable time to review all required submittals.

3.10.3 If the Contractor fails to submit or resubmit an approved schedule within the time prescribed, the Architect may withhold approval of progress payments until the Contractor submits the required schedule.

3.10.4 During construction, the Contractor shall enter the actual progress on the chart as directed by the Architect. If, in the opinion of the Architect, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve progress, including those that may be required by the Architect, without additional cost to the State. In this circumstance, the Architect may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Architect deems necessary to demonstrate how the approved rate of progress will be regained.

3.10.5 Failure of the Contractor to comply with the requirements of the Architect under this clause shall be grounds for a determination by the Owner and Architect that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Owner may terminate the Contractor's right to proceed with the Work, or any separable part of it, in accordance with the termination for cause terms of this Contract.

**SUBPARAGRAPH 3.12.5: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

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 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

**PARAGRAPH 3.12: ADD THE FOLLOWING SUBPARAGRAPH:**

3.12.11 The Architect and Owner may duplicate, use and disclose, in any manner and for any purpose, shop drawings delivered under this Contract and all subcontracts hereunder at any tier.

**PARAGRAPH 3.13: DELETE SUBPARAGRAPH 3.13.1 IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

3.13.1 The Contractor shall confine operations (including storage of materials) at the site to areas permitted by law, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents as approved by the Architect and Owner, and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The Contractor shall at all times so conduct the Work as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in

the vicinity of the Work, and to ensure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper authorities. Fire hydrants on or adjacent to the Work shall be kept accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks and the proper functioning of all gutters, sewer inlets, drainage ditches, irrigation ditches, etc., which shall not be obstructed.

**PARAGRAPH 3.16: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

**3.16 ACCESS TO WORK**

The Contractor shall provide the Owner and Architect and authorized representatives of the State and Federal Governments access to the Work in preparation and progress wherever located. The Contractor shall furnish without additional charges, all reasonable facilities necessary for safe and convenient inspections.

**SUBPARAGRAPH 3.18.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

**3.18 INDEMNIFICATION**

3.18.1 The Contractor shall defend, indemnify, and hold harmless the Owner (i.e. The Adjutant General, State of North Dakota), its agents, officers and employees, from and against claims based on the vicarious liability of the Contractor or its agent, but not against claims based on the Owner's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Contractor to the Owner under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Owner is necessary. The Contractor also agrees to defend, indemnify, and hold the Owner harmless for all costs, expenses and attorneys' fees incurred if the Owner prevails in an action against the Contractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

## **ARTICLE 4**

### **ARCHITECT**

**SUBPARAGRAPH 4.1.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

4.1.1 The term "Architect," throughout these Contract Documents, refers to the person or entity lawfully engaged in the practice of architecture or engineering and who is identified as the Architect or Engineer on page one of the Standard Form of Agreement Between Owner and Contractor (AIA Document A101).

**SUBPARAGRAPH 4.2.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until the date the Architect issues the final Certificate for Payment, and (3) and from time to time during the one-year period for correction of Work as described in 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

## **ARTICLE 5**

### **SUBCONTRACTORS**

**PARAGRAPH 5.2: DELETE THE FOLLOWING SUBPARAGRAPHS IN THEIR ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

5.2.2 The Contractor shall not contract with any person or entity declared ineligible under Federal laws or regulations from participating in Federally assisted construction projects or to whom the Owner or the Architect has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection.

5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity previously selected and to whom the Owner and Architect have made no reasonable objection except with the written consent of the Owner and Architect.

**PARAGRAPH 5.3: ADD THE FOLLOWING SUBPARAGRAPHS:**

5.3.1 Prior to employment on the job site, each Subcontractor and Sub-subcontractor must acknowledge that the terms and conditions of the Contract Documents are incorporated into and made a part of their subcontract. Subcontractor Statement and Acknowledgment, AGND Document 435S, will be utilized for this purpose.

5.3.2 Notwithstanding all other provisions of the contract documents, all claims for any work or improvement made by subcontractors, sub-subcontractors, and suppliers of material and/or equipment shall be governed by the provisions of sections 48-01.2-11 and 48-01.2-12 of the North Dakota Century Code.

5.3.3 In the absence of a written agreement between the Contractor and subcontractors concerning the resolution of disputes, disputes shall be submitted to arbitration pursuant to Chapter 32-29.3, N.D.C.C.

## ARTICLE 7

### CHANGES IN THE WORK

#### **PARAGRAPH 7.1: ADD THE FOLLOWING SUBPARAGRAPH:**

7.1.4 Neither the Owner nor the Architect is responsible to give notice of Change Orders, Construction Change Directives, and/or orders for minor changes in the Work to the surety (if any).

#### **PARAGRAPH 7.2: ADD THE FOLLOWING SUBPARAGRAPHS:**

7.2.2 The Contractor, in connection with any proposal for a Change Order, shall furnish a price breakdown, itemized as required in Subparagraph 7.2.3 below. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all materials, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the change proposal, whether such work was deleted, added, or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the change proposal includes a time extension, a justification therefor, shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Owner.

7.2.3 Costs for proposals to perform changes in the Work consisting of additions, deletions, or other revisions shall be limited to the following:

- .1 Actual labor costs involved to include fringe benefits required by agreement or custom plus twenty-five (25%) for all labor overhead factors which include job superintendent salary and subsistence
- .2 Actual costs of materials, supplies, and equipment including all transportation costs and applicable taxes
- .3 Actual rental costs of machinery and equipment, exclusive of hand tools
- .4 Fifteen percent (15%) of direct labor, material, supplies, equipment, and rental gross amounts and ten percent (10%) of subcontracts for all overhead and profit factors, which includes all insurance costs.
- .5 One percent (1%) for all bond premium adjustments unless actual costs are greater as evidenced by invoices or other data
- .6 Credits are to be calculated in a similar manner, including overhead and profits on subcontracts (10%), but not on labor and materials (15%), except that when both additions and credits covering related Work or substitutions are involved in a change proposal, the allowance for overhead and profit (15%) shall be figured on the basis of net increase, if any, with respect to that change proposal.

7.2.4 If a Change Order is written and the new total contract amount is more than \$25,000, then the Contractor must furnish Data Universal Numbering Systems (DUNS)

number to be in compliance with the Federal Funding Accountability and Transparency Act of 2006.

#### **SUBPARAGRAPH 7.3.3 ADD THE FOLLOWING SUBPARAGRAPH:**

7.3.3.5 By the method provided in subparagraph 7.2.3. This method will be utilized exclusively for all construction change directives unless other above listed methods are specifically authorized by Owner.

#### **SUBPARAGRAPH 7.3.9: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with such costs.

## ARTICLE 8

### TIME

#### **ARTICLE 8: ADD THE FOLLOWING PARAGRAPH:**

#### **8.4 NOTICE TO THE OWNER OF LABOR DISPUTES**

8.4.1 If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice, including all relevant information, to the Owner.

8.4.2 The Contractor agrees to insert the substance of this clause, including this paragraph 8.4.2, in any subcontract to which a labor dispute may delay the timely performance of this Contract, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

## ARTICLE 9

### PAYMENTS AND COMPLETION

#### **SUBPARAGRAPH 9.3.1**

#### **SUBPARAGRAPH 9.3.1.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

9.3.1.1 As provided in Subparagraph 7.3.9 (as revised by these Supplementary General Conditions), such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives and which are accompanied

by a Change Order indicating the parties' agreement with costs associated with such Work.

**ADD THE FOLLOWING SUBPARAGRAPHS:**

9.3.1.3 Contractor shall submit Application for Payment to Architect in two copies, both with original signatures, to include notarization of Contractor's signature. Said application for payment shall be written on AIA Document G702, Application and Certificate for Payment, copies of which shall be furnished by the Owner.

9.3.1.4 If required by Architect, Contractor shall furnish with each Application for Payment lien waivers from specified subcontractors and suppliers for labor and materials approved for progress payment under previous application.

9.3.1.5 Applications for payment shall reflect a retainage equal to 10% of Contractor's Application for Payment until such time as Contract is 50% completed. When 95% complete, up to 95% of the amount retained from previous estimates may be paid at the discretion of the Architect. Final payment of all moneys due the Contractor shall be made immediately following completion and acceptance of the project as provided in paragraph 9.10.

**SUBPARAGRAPH 9.5.3: DELETE IN ITS ENTIRETY.**

**SUBPARAGRAPH 9.6.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

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. The Owner shall have thirty days AFTER receipt of Certificate for Payment from Architect for administrative processing and issuance of payment. No contractor payment shall become due and/or unpaid prior to the expiration of said thirty day period.

**PARAGRAPH 9.10.2: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

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 substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or

encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**PARAGRAPH 9.10: ADD THE FOLLOWING SUBPARAGRAPH:**

9.10.6 Items specifically required by Owner to be submitted by Contractor prior to final payment as per Subparagraph 9.10.2 as a minimum, are enumerated as follows:

- .1 Contractor's Affidavit of Payment of Debts and Claims, conditioned that the Contractor has satisfied all obligations for all materials and equipment furnished and all work, labor, and services performed in connection with the performance of this Contract, and further, that the Contractor will indemnify the Owner against all liability for any and all claims, judgments, and costs brought or obtained by subcontractors, all suppliers of materials and equipment, and all performers of work, labor, or services arising in any manner out of the performance of the Contract.
- .2 Consent of Surety to Final Payment (if performance/payment bonds were required).
- .3 Contractor's Release or Waiver of Liens.
- .4 Current Statement of ND Tax Commissioner relating to income tax and sales tax clearance.
- .5 Current Certificate of Premium Payment to North Dakota Workforce Safety and Insurance.

## **ARTICLE 10**

### **PROTECTION OF PERSONS AND PROPERTY**

**PARAGRAPH 10.1: ADD THE FOLLOWING SUBPARAGRAPHS:**

10.1.1 When required by the Owner, the Contractor shall submit to the Owner a copy of the written safety program to be used as guidelines and direction for the Contractor's and subcontractors' activities. This program must meet all federal, state, and local laws, regulations, and other legal requirements and shall include the following minimum provisions:

- .1 a worksite safety policy and mission statement.
- .2 assigned responsibilities among management, supervisors, and employees.
- .3 a system for periodic self-inspections, including inspections of job sites, materials, work performance, and equipment.

.4 a thorough accident and injury reporting and investigation process.

.5 a safety orientation program including first aid, medical attention, emergency facilities, fire protection and prevention, housekeeping, illumination, sanitation, personal protective equipment, and occupational noise exposure.

.6 a safety training program including safety "tool box" meetings and other systems for ongoing training and also including training for employees on the recognition, avoidance, and prevention of unsafe conditions.

10.1.2 It will be a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this contract, that the Owner shall assume no liability relating to its receipt and review of the Contractor's safety plan or activities. Safety remains the responsibility of the Contractor. Furthermore, the right of the Owner to receive and review the safety plan or activities 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.

**PARAGRAPH 10.3: ADD THE FOLLOWING SUBPARAGRAPH:**

10.3.7 No material, supplies, or equipment shall be furnished or installed by the Contractor for this Project which contains hazardous materials. This includes but is not necessarily limited to asbestos and polychlorinated biphenyl (PCB).

**SUBPARAGRAPH 10.3.3: DELETE IN ITS ENTIRETY.**

## **ARTICLE 11**

### **INSURANCE AND BONDS**

**SUBPARAGRAPH 11.1.2: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

11.1.2 The insurance required by Subparagraph 11.1.1 and Article 16 of these Supplementary General Conditions of the Contract for Construction shall be written for not less than the limits of liability specified in said Article 16 or required by law, whichever coverage is greater. Neither the Owner nor the Architect shall be responsible in the event limits are insufficient. Coverages shall be written on an occurrence basis, and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Products and completed operations coverage will be maintained for a period of one year after final payment unless longer warranty period is specified.

**SUBPARAGRAPHS 11.1.3 AND 11.1.4: DELETE IN THEIR ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

11.1.3 The insurance required by Subparagraph 11.1.1 and Article 16 of these Supplementary General Conditions of the contract for Construction must meet the following additional requirements:

- .1 Any deductible or self insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self retention is subject to approval by the Owner.
- .2 This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the Owner. The policies shall be in form and terms approved by the Owner.
- .3 The duty to defend, indemnify, and hold harmless the Owner under this Contract shall not be limited by the insurance required in this agreement.
- .4 The Owner (The Adjutant General, State of North Dakota) and its agents, officers, and employees shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The Owner shall have all the benefits, rights, and coverages of an additional insured under said policies.
- .5 The insurance required in this agreement, through a policy or endorsement, shall include:
  - a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the Owner;
  - a provision that any attorney who represents the Owner under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
  - a provision that Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Owner and that any insurance, self-insurance or self-retention maintained by the Owner shall be in excess of the Contractor's insurance and shall not contribute with it;
  - cross liability/severability of interest for all policies and endorsements;
  - the legal defense provided to the Owner under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the Owner is necessary.
  - the insolvency or bankruptcy of the insured Contractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Contractor from meeting the retention limit under the policy.
- .6 The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance



required by Section 11.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

- .7 The Contractor shall furnish a certificate of insurance to the Owner prior to commencement of the Work. All endorsements shall be provided as soon as practicable.
- .8 Failure to provide insurance as required herein is a material breach of contract entitling Owner to immediately terminate this agreement.

**PARAGRAPH 11.2: DELETE IN ITS ENTIRETY.**

**SUBPARAGRAPH 11.3.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

11.3.1 If required in Article 16, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. This property insurance shall in no case be less than that specified in Article 16 of these Supplementary General Conditions of the Contract for Construction. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Paragraph 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.4 to be covered, whichever is later. The Owner (The Adjutant General, State of North Dakota) and all Contractors, Subcontractors and Sub-subcontractors in the Project shall be endorsed on this policy as additional insureds.

**SUBPARAGRAPH 11.3.1.2: DELETE IN ITS ENTIRETY.**

**SUBPARAGRAPH 11.3.1.3: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

11.3.1.3 A property insurance deductible is allowed as identified in Article 16 of these Supplementary General Conditions of the Contract for Construction. The Contractor purchasing and maintaining this insurance shall pay all costs not covered because of such deductible, except that each and every Contractor (prime, subcontractor, sub-subcontractor,

etc.) who sustains a loss shall be responsible for said deductible as pertains to materials and/or equipment stored off the site or in transit. Once materials and/or equipment are on site or have been installed and are a permanent part of the building itself, all losses shall be the responsibility of the Contractor furnishing the property insurance.

**SUBPARAGRAPH 11.3.1.4: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

11.3.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site and portions of the Work in transit in the limits specified in Article 16 of these General Supplementary Conditions of the Contract for Construction.

**SUBPARAGRAPHS 11.3.2, 11.3.4 AND 11.3.5: DELETE IN THEIR ENTIRETY.**

**SUBPARAGRAPH 11.3.6: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner the original policy or a certified copy thereof that includes insurance coverages required by the Paragraph 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Contractor shall provide written notification to the Owner of the cancellation or expiration of any insurance required by Section 11.3. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**SUBPARAGRAPHS 11.3.7, 11.3.8, AND 11.3.9: MODIFY CONTENT BY CHANGING AS FOLLOWS:**

All references in above listed paragraphs that refer to Owner's duties/responsibilities, Owner's property insurance, Owner as "fiduciary", etc., shall be changed to mean Contractor's duties/responsibilities, Contractor's property insurance, Contractor as "fiduciary", etc. The Contractor referred to in these paragraphs is that Contractor responsible for purchasing and maintaining the property insurance.

**SUBPARAGRAPH 11.3.10: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS**

11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Article 15.

## ARTICLE 12

### UNCOVERING AND CORRECTION OF WORK

#### **SUBPARAGRAPH 12.2.2.1: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS:**

12.2.2.1 In addition to the Contractor's obligations under Paragraph 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 Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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 Paragraph 2.4.

#### **SUBPARAGRAPH 12.2.2.3: DELETE IN ITS ENTIRETY.**

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### **PARAGRAPH 13.1: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

##### 13.1 GOVERNING LAW

This Contract is governed by the laws of the State of North Dakota. Any action to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.

#### **PARAGRAPH 13.6: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

##### 13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date payment is due until the issuance of proper payment therefor.

#### **ADD THE FOLLOWING PARAGRAPHS:**

### 13.8 MAINTENANCE OF RECORDS BY CONTRACTOR

13.8.1 The Contractor shall maintain all directly pertinent books, documents, papers, and other records involving transactions related to this Contract for three years after the Owner makes final payment and all other pending matters are closed.

### 13.9 NONDISCRIMINATION IN EMPLOYMENT

13.9.1 In connection with the performance of work under this Contract, the Contractor will not discriminate against any employee or applicant for employment because of sex, race, creed, color, or national origin; and will insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

### 13.10 LIQUIDATED DAMAGES

13.10.1 The parties agree that damages for non-performance by the Contractor would be difficult to estimate at the time of entering this contract. If the Contractor fails to complete the Work within the time specified in the Contract, or any extension, the Contractor shall pay to the Owner as liquidated damages the amount of \$100.00 for each day of delay, plus any costs incurred by the Owner for legal review and Contract modification.

13.10.2 If the Owner terminates the Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Owner in completing the Work.

13.10.3 If the Owner does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the Work is completed or accepted.

## ARTICLE 14

### TERMINATION OR SUSPENSION OF THE CONTRACT

#### **SUBPARAGRAPH 14.1.2: DELETE IN ITS ENTIRETY**

#### **SUBPARAGRAPH 14.1.3: MODIFY CONTENT BY CHANGING IT TO READ AS FOLLOWS**

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

**PARAGRAPH 14.3: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

**14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

14.3.1 The Owner may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work of this Contract for the period of time that the Owner determines appropriate for the convenience of the State.

14.3.2 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Owner in the administration of this Contract, or (2) by the Owner's failure to act within the time specified in this Contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this Contract.

14.3.3 A claim under this clause shall not be allowed:

- .1 for any costs incurred more than 21 days before the Contractor shall have notified the Owner in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and
- .2 unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the Contract.

**PARAGRAPH 14.4: DELETE IN ITS ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

**14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

14.4.1 The Owner, by written notice, may terminate this Contract, in whole or in part, when it is in the best interest of the State. If this Contract is so terminated, the Owner shall be liable only for payment in accordance with the payment provisions of this Contract for Work executed prior to the effective date of termination, and costs incurred by reason of such termination.

**ADD THE FOLLOWING PARAGRAPH:**

**14.5 TERMINATION BY THE OWNER FOR LACK OF FUNDING OR AUTHORITY**

14.5.1 The Owner, by written notice, may terminate this Contract under any of the following conditions:

- .1 If funding from federal, state, or other sources is not available at levels sufficient to allow for the continuation of the Work.

.2 If federal or state laws or rules are modified or interpreted in a way that the Work under this contract is no longer eligible for the funding proposed for payments authorized by this contract.

.3 If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

14.5.2 If this Contract is so terminated, the Owner shall be liable only for payment in accordance with the payment provisions of this Contract for Work executed prior to the effective date of termination, and costs incurred by reason of such termination.

## **ARTICLE 15**

### **CLAIMS AND DISPUTES**

**SUBPARAGRAPHS 15.2.5 AND 15.2.6: DELETE IN THEIR ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

15.2.5 The Initial Decision Maker will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Initial Decision Maker shall be final and binding on the parties but subject to Alternative Dispute Resolution (ADR) as set forth in paragraph 15.3 of this article. A demand for ADR must be made within 30 days after the date on which the party making the demand receives the Initial Decision Maker's final written decision. Failure to make such demand within 30 days shall result in the Initial Decision Maker's decision becoming final and binding upon the Owner and Contractor.

**PARAGRAPHS 15.2.6 and 15.2.6.1: DELETE IN THEIR ENTIRETY.**

**PARAGRAPHS 15.3 and 15.4: DELETE IN THEIR ENTIRETY AND SUBSTITUTE THE FOLLOWING:**

**15.3 ALTERNATIVE DISPUTE RESOLUTION**

The parties under this Contract shall have the option to resolve disputes by means of alternative dispute resolution. However, the Owner does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution, nor does the Owner waive any right to a jury trial. The parties shall retain their right to seek remedies in judicial proceedings.

## **ARTICLE 16**

### **INSURANCE REQUIREMENTS**

See following page for minimum insurance coverage required by this Contract.

# ARTICLE 16

## INSURANCE REQUIREMENTS

### 16.1 INSURANCE

TYPE OF INSURANCE	LIMITS OF LIABILITY	
.1 <input checked="" type="checkbox"/> Worker's Compensation	STATUTORY	
.2 Commercial General Liability including:  <input checked="" type="checkbox"/> Premises - Operations <input checked="" type="checkbox"/> Underground Hazard <input checked="" type="checkbox"/> Explosion and Collapse Hazard <input checked="" type="checkbox"/> Products and Completed Operations <input checked="" type="checkbox"/> Contractual Liability <input checked="" type="checkbox"/> Independent Contractors <input checked="" type="checkbox"/> Broad Form Property Damage <input checked="" type="checkbox"/> Personal Injury	<div> <div>\$ 1,000,000</div> <div>EACH OCCURRENCE</div> </div> <div> <div>\$ 2,000,000</div> <div>AGGREGATE *</div> </div> <div>FOR</div> <div>BOTH BODILY INJURY AND PROPERTY DAMAGE INDIVIDUALLY OR COMBINED SINGLE LIMIT</div> <div>* The aggregate limit shall be on a per project basis.</div> <div>Owner shall be additional insured. See Article 11, Subparagraph 11.1.3.</div>	
.3 Automobile Liability  <input checked="" type="checkbox"/> Owned <input checked="" type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-Owner	<div> <div>\$ 1,000,000</div> <div>OR</div> <div>COMBINED SINGLE LIMIT (CSL)</div> </div> <div> <div>\$ 1,000,000</div> <div>BODILY INJURY (Per Person)</div> </div> <div> <div>\$ 1,000,000</div> <div>BODILY INJURY (Per accident)</div> </div> <div> <div>\$ 500,000</div> <div>PROPERTY DAMAGE</div> </div>	
.4 Excess Liability  <input checked="" type="checkbox"/> Umbrella Form <input type="checkbox"/> Other than Umbrella	<div> <div>\$ 1,000,000</div> <div>COMBINED SINGLE LIMIT</div> </div>	
.5 <input type="checkbox"/> Builder's All Risk Insurance/ Installation Floater	At Contractor's Discretion	

# FEDERAL PROVISIONS

The following federal laws and regulations apply to this contract.

## NONDISCRIMINATION

The Contractor agrees that no person shall be subject to discrimination or denied benefits in connection with the Contractor's performance under this Contract. Accordingly and to the extent applicable, the Contractor covenants and agrees to comply with the following national policies on discrimination:

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195;
- b. On the basis of race, color, or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60;
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196;
- d. On the basis of Age, in the Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR Part 90;
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as implemented by Department of Justice regulations at 28 CFR part 41 and DoD Regulations at 32 CFR Part 56.

## LOBBYING

- a. The Contractor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the Contractor agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

## DRUG-FREE WORK PLACE

The Contractor covenants and agrees to comply with the requirements regarding drug-free workplace requirements in 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).

## ENVIRONMENTAL PROTECTION

- a. The contractor covenants and agrees that its performance under this Contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 USC 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR part 31;
- (8) To identify any impact this award may have on the quality of human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, 42 U.S.C 4321, et seq.) and any applicable federal, state or local environmental regulation.

- b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the awarding agency any impact this award may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

## **USE OF UNITED STATES FLAG CARRIERS**

a. The Contractor covenants and agrees that travel supported by U. S. Government funds under this agreement shall use U. S.-flag air carriers (air carriers holding certificates under 49 U. S. C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contractor agrees that it will comply with the Cargo Preference Act of 1954 (49 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

## **DEBARMENT AND SUSPENSION**

The Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. The Contractor agrees to comply with the DOD implementation of 2 CFR Part 180 (at 2 CFR Part 1125) by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the contractor contract files and shall be subject to audit by the Federal/State audit agencies.

## **BUY AMERICAN ACT**

The Contractor covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

## **UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT**

The Contractor covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

## **COPELAND “ANTI-KICKBACK” ACT**

The Contractor covenants and agrees that it will comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this Contract, the Copeland “Anti-Kickback” Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The Contractor covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this Contract, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this Contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

## **UNIVERSAL IDENTIFIER REQUIREMENT**

The Contractor is required to provide their Data Universal Numbering System (DUNS) number to be in compliance with the Federal Funding Accountability and Transparency Act of 2006.

SPECIFICATIONS

FOR

**EXTERIOR WALL REPAIR  
BLDGS. 3600, 3800, & 3810  
Camp Gilbert C. Grafton  
Devils Lake, North Dakota**

I hereby certify that these plans and specifications were prepared by me or under my direct supervision and that I am a duly Registered Professional Architect under the laws of the State of North Dakota.

A handwritten signature in black ink, appearing to read 'Kevin J. Bartram', is written over a horizontal line.

KEVIN J. BARTRAM  
North Dakota Registration No. 944

Date: 20 November 2017

MUTCHLER BARTRAM ARCHITECTS  
505 N Broadway, Ste 201  
Fargo, North Dakota 58102  
Telephone: (701) 235-5563





.01 CONSTRUCTION SCHEDULE:

- a. All material shall be ordered immediately upon award of contract.
- b. Construction work shall start, commensurate with material delivery schedule, and shall be diligently pursued to the end that all construction is totally completed on or before August 31, 2018. The time stated for completion shall include final cleanup of the premises.
- c. The foregoing completion date is based on the assumption that the successful bidder will receive the notice to proceed by January 4, 2018. The State will extend the completion date by the number of calendar days after the above date that Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds and other data required for contract award within the time specified in the bid.
- d. NOTE: Contractor must consider that once project construction is initiated after receipt of notice to proceed, all general requirement responsibilities (i.e., project superintendence, contractor coordination, scheduling, utilities, temporary field office facilities/controls, etc.) will continue for the duration of the entire construction period.
- e. Scheduled completion date carries a liquidated damages clause (see Article 13 of Supplementary General Conditions of the Contract for Construction - AGND Document 415). Contractors and subcontractors shall recognize the importance of their responsibilities in completing their work on or ahead of schedule and in strict cooperation with each other.
- f. The Contractor shall furnish not less than forty-eight (48) hours notice prior to starting work. Notice shall be furnished to the Director of Facilities Engineering - COL Clark V. Johnson, P.E., Fraine Barracks, Bismarck, North Dakota - Telephone: (701) 333-2075 and to Mr. Greg Oakland, AIA, Mutchler Bartram Architects, 505 North Broadway, Suite 201, Fargo, North Dakota - Telephone: (701) 235-5563.
- g. In order to complete the work in the stipulated time, the Contractor may elect to work longer than eight (8) hours in any one day, or forty (40) hours in any one (1) week. However, he must notify the Office of the Adjutant General's field representative of his intentions to do so not less than twenty-four (24) hours before the scheduled overtime. The Contractor's Project Superintendent/Foreman MUST BE on the job site supervising ALL scheduled overtime work.

.02 SCOPE OF WORK:

Extent of drawings and specifications defining all work to be performed under this contract are listed on cover sheet of specification book. It is the bidding Contractor's sole responsibility to verify that he has received all sheets of plans and specifications as no claim for extra cost will be allowed due to the lack of complete information at the time of bid.

.03 ASTM DESIGNATIONS:

Shall be latest edition for all sections of specifications. Materials specified to comply to a certain standard (ASTM or other) shall be delivered to job properly labeled and identified. If material is not labeled, Contractor shall furnish a certificate of compliance from manufacturer.

.04 TERMINOLOGY:

- a. Requirements of all Specification Sections A through J and Division 01000 extend and apply to all work required of all contractors, subcontractors, material suppliers, etc., set forth in other divisions of the specifications.
- b. Where the term "include" is used under Scope of Work paragraphs of subsequent specification sections, this shall be interpreted to mean items of work therein listed may be a part, but not necessarily the total limit, of the work required by such section. Contractor shall examine drawings and specification documents.
- c. 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" or "as shown on Drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference. The term "provide" shall mean "furnish and install in place".
- d. Where a number is listed in the specifications (as for gauges, weights, temperatures, amount of time, etc.), the number shall be interpreted as that or better.

.05 LAYOUT AND MEASUREMENTS:

- a. Contractor shall, upon entering project site for purposes of beginning work, locate all general reference points and take such action as is necessary to prevent their destruction; lay out his own work and be responsible for all lines, elevations, measurements, utilities, and other work executed by him under contract. Contractor must exercise proper precaution to verify figures shown on drawings before layout work as they will be held responsible for any error resulting from failure to exercise such precaution.
- b. Figured dimensions shall be followed in preference to measurements by scale; large scale drawings shall take precedence over those of a small scale. Figures on all drawings, as detail drawings themselves are, in every case, subject to measurements of adjacent or incorporated completed work. All such necessary measurements shall be taken before undertaking any work dependent upon such data. Report any discrepancies to Architect for clarification before proceeding with work.
- c. Where, on any drawings, a portion of work is drawn out and remainder is indicated in outline, parts drawn out or indicated by symbols or instructions by word description shall apply also to all other like portions of the work.

d. Where existing work is added to or modified, the Contractor shall be responsible to verify existing dimensions and conditions. Any existing condition which affects a Contractor's new work should be verified for accuracy. This includes, but is not limited to, such items as clearances, dimensions, existing equipment, existing services, working conditions, etc.

e. Where a clear understanding of the work is prevented, due to discrepancies, contradictions, or omissions on contract documents or subsequently issued instructions (regardless of source), Contractor shall not proceed with work and Architect should be consulted for clarification of the uncertainty. Should any mistake result due to pursuit of work without this clarification, Contractor must make necessary corrections at his expense and as directed by Architect.

#### .06 CONTRACTOR COORDINATION:

a. Contractor shall employ a full-time, on site Project Superintendent(s) who will be responsible for continuous overall coordination between phases of work and he shall be the Contractor's liaison with Architect and Owner's on site representative. Project Superintendent shall have a minimum of five (5) years experience in the field, and be approved by the Architect and Owner before onset of work. He shall be maintained by the Contractor throughout the project and not be replaced without approval of the Architect and Owner.

b. The Contractor shall, upon conferring with the subcontractors, prepare and submit to the Architect, within ten (10) days of contract award, three (3) copies of the proposed construction progress schedule for approval, all in accordance with Para. 3.10, Article 3 of Supplementary General Conditions of the Contract for Construction (AGND Document 415). Upon written approval of the proposed schedule by all parties concerned (i.e., Architect, Owner, and Contractor), the Contractor shall furnish one (1) copy each to its subcontractors.

- (1) The construction schedule shall consist of a bar chart showing the order and interdependence of activities and the sequence in which the work is to be accomplished. The project completion date (August 31, 2018) WILL BE shown on the schedule.
- (2) The bar chart shall be scaled using units of approximately one-half inch equals one week or other suitable scale approved by Architect. Weekends and holidays shall be indicated. The chart shall show the principal categories of work corresponding with those used in the breakdown on which the progress payments are based.
- (3) The chart shall indicate ALL key construction phases as required by Architect and Owner.

c. The Contractor's Project Superintendent(s) responsibilities shall include, but not be limited to:

- (1) Consult the contract drawings and specifications to verify and coordinate the location of the various building components and items to be installed. Review the

daily work schedules of Subcontractors for a minimum of interferences to the work of other subcontractors.

- (2) Consult and cooperate with all subcontractors/installers for all work to determine space requirements and adequate clearances with respect to other equipment in the building.
  - (3) Hold specific daily coordination meetings for each element of the work, maintain written documentation of events, report to Architect at regular (weekly) project meetings.
  - (4) Keep the Architect and Owner's Representative fully informed of the progress of the work and endeavor to safeguard the Owner against any defects and deficiencies in all the Work.
- d. The Contractor's Project Superintendent shall coordinate all arrangements for project progress meetings which shall be held at maximum weekly. Attendance shall include Architect, Owner's Representative(s) and Contractor Superintendents/Foremen. All subcontractors and suppliers involved in current major phases of work shall also be in attendance.

- (1) The Contractor's Project Superintendent shall, after consultation with Architect and Owner's Representative, prepare and furnish agenda with copies for participants.
- (2) The Architect shall preside at the meetings, record minutes, and distribute copies within two (2) working days to Owner and Contractor. It shall be the Contractors responsibility to immediately distribute copies to respective subcontractors, suppliers and installers who were participants and/or affected by the decisions made.
- (3) The general purpose of the progress meeting shall be to: review previous meeting minutes; review work progress; review submittal schedules, delivery schedules, site access and utilization, temporary facilities and controls and progress cleaning requirements; review of progress schedule and determination of corrective measures to regain projected schedule to include firm commitments from responsible entities; review and coordinate planned progress for succeeding work period; review and coordinate change orders; update progress schedule as required; and conduct any other business relating to the Work.
- (4) Immediately following the progress meeting, the Project Superintendent shall review and coordinate all items listed in the minutes.
- (5) When revisions to project schedule have been made, to include all necessary approvals, the Contractor shall reissue revised schedules in accordance with previous paragraph .06b.

e. The Contractor will be responsible for construction means, methods, techniques, procedures, or for safety precautions and programs, or for the safety of workmen in connection with the work.

f. Contractor shall provide bucks, openings and recesses required for installation of all work unless specified to the contract. He shall notify all subcontractors of work schedules sufficiently in advance so they can cooperate with him and be responsible for proper location and sizes of openings required for their work.

g. Contractor and subcontractors shall coordinate scheduling, submittals, and work of the various sections of specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.

h. Limitations on site usage as well as specific requirements that impact site utilization are indicated on the drawings and by other contract documents. Contractor shall administer allocation of available space equally among entities needing both access and space so as to produce the best overall efficiency in performance of the total work of the project. Contractor shall schedule deliveries so as to minimize space and time requirements for storage of materials and equipment on site. Architect shall be sole judge as to allocation of available space in case of dispute.

#### .07 WORKMANSHIP:

a. 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 his approval before proceeding.

b. Completed work shall be left plumb, level, true to line or plane, anchored securely in place, and free from damage.

c. 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.

d. Except where in conflict with these specifications, current manufacturer's printed specifications of herein specified proprietary products are made part of these specifications.

#### .08 LOCATION OF UTILITIES:

a. It shall be the Contractor's responsibility to familiarize himself with location of all existing sewer mains, storm mains, water mains, gas mains, telephone cables, cable TV, power lines, street light wiring, and all of their associated service lines, and appurtenances such as poles, guy wires, supports, pads, valve boxes, stop boxes, manholes, and clean-outs pertaining to utility service. The Contractor shall be responsible for notifying North Dakota One-Call at 1-800-795-0555 at least 48 hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, and shall comply with all requirements of Section 49-23 of the North Dakota Century Code. The Contractor shall hire a qualified technician to locate those underground utility lines that are not covered by the

North Dakota One-Call system. All costs associated with locating all utilities shall be the responsibility of the Contractor.

b. The Contractor for the project will be held responsible for damage to any underground or overhead piping, wiring, or other utility property, occurring during any excavation or construction by the respective Contractor or his subcontractors.

.09 PUBLIC CONVENIENCE:

a. The Contractor shall, at all times, so conduct his work as to insure the least possible obstruction to traffic and inconvenience to National Guard operational activities, the general public and the residents in the vicinity of the work, and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the proper authorities. Fire hydrants on or adjacent to the work shall be kept accessible to firefighting equipment at all times.

b. The Contractor shall cooperate and coordinate with the Owner in scheduling the work to accommodate National Guard operations.

.10 PRE-CONSTRUCTION MEETING:

Not more than fifteen (15) days after date of notice to proceed, the Architect/Owner shall call a pre-construction meeting. Required in attendance shall be Architect, Owner's representative(s), Contractor and their Superintendent/Foremen together with their major subcontractors and suppliers. The general purpose of meeting will be to: review contract documents; review Owner procedures, documentation requirements, and general project overview agenda; procedures for processing of subcontractors approval, product approval, schedule of values and progress schedule; designation of personnel representing the Architects, Owner and Contractor; procedures for processing field decisions, submittals, applications for payment, proposal requests and change orders; coordinate temporary facilities and controls; and discuss any other items of concern which relate to the Work.

.11 BUILDING PERMIT:

a. A building permit is not required for this project. All other fees, permits, licenses, bonds, etc., are the individual responsibility of the Contractor in accordance with other pertinent sections of these specifications and should be included in their bids.

b. This facility is subject to inspection by state building code officials. Any costs that will be incurred by the contractor for inspections by state building code officials shall be included in that contractors bid.

## EXTERIOR WALL REPAIR

Bldgs 3600, 3800 & 3810, Camp Gilbert C. Grafton, Devils Lake, ND

Owner: The Adjutant General, State of ND

Description of

Bid Items

Section 01200 - Page 1

### .01 GENERAL INFORMATION:

- a. The determination of lowest and best Bidder will be the sum of selected Bid Item(s), and respective Alternates (if any) as determined by the Owner.
- b. Bidders must bid on all Bid Item(s) and Alternates (if any) specified within the type bid being submitted. Bidder may state his refusal to accept award of less than the combination of Bid Item(s) and Alternates (if any) he so stipulates. The Bidder shall make no additional stipulations on the Bid Form nor qualify his bid in any other manner.
- c. In preparing his bid, Bidder is instructed to thoroughly familiarize himself with requirements herein so that his bid will be properly assembled and presented for Owner consideration.
- d. Refer to "Invitation to Bid"; Article 4 of AIA Document A701; and Article 4 of AGND Document 411 "Supplementary Instructions to Bidders" regarding procedures for submission of bids.
- e. Prior to the award of the Contract, to enable the Owner to separate costs for funding purposes and as a condition of contract approval, the low bidder(s) may be required to clearly identify cost breakouts of specific items as required by the Owner.

### .02 BID ITEMS:

- a. **BID ITEM NO. 1:**  
(Exterior Wall Repair,  
Bldg 3600)  
State the total cost for all work in connection with the complete Construction for the Exterior Wall Repair, Bldg 3600, as herein specified (Specification Divisions 07 and 09); and as shown on the Drawings, including all work associated with; adjacent surfaces protection, demolition, disposal, salvage, reinstallation, cleaning, patching, sealants, sealers, painting, and all other work required by the contract documents. ALL costs associated with general requirements (Specification Division 01000) shall be included in this bid item.
- b. **BID ITEM NO. 2:**  
(Exterior Wall Repair,  
Bldg 3800)  
State the total cost for all work in connection with the complete Construction for the Exterior Wall Repair, Bldg 3800, as herein specified (Specification Divisions 07 and 09); and as shown on the Drawings, including all work associated with; adjacent surfaces protection, demolition, disposal, salvage, reinstallation, cleaning, patching, sealants, sealers, painting, and all other work required by the contract documents. ALL costs associated with general requirements (Specification Division 01000) shall be included in this bid item.

EXTERIOR WALL REPAIR

Bldgs 3600, 3800 & 3810, Camp Gilbert C. Grafton, Devils Lake, ND

Owner: The Adjutant General, State of ND

Description of

Bid Items

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- c. BID ITEM NO. 3:  
(Exterior Wall Repair,  
Bldg 3810)

State the total cost for all work in connection with the complete Construction for the Exterior Wall Repair, Bldg 3810, as herein specified (Specification Divisions 07 and 09); and as shown on the Drawings, including all work associated with; adjacent surfaces protection, demolition, disposal, salvage, reinstallation, cleaning, patching, sealants, sealers, painting, and all other work required by the contract documents. ALL costs associated with general requirements (Specification Division 01000) shall be included in this bid item.

END OF SECTION 01200



.01 SCOPE OF WORK:

- a. Wherever possible throughout the contract documents, the minimum acceptable quality of workmanship and material has been defined by manufacturer's name and catalog number or by reference to recognized industry standards.
- b. To ensure that the specified products are furnished and installed in accordance with design intent, procedures have been established for advance submittal of design data and for its review and approval or rejection by the Architect.
- c. Related Work Described Elsewhere:
  - (1) Contractual requirements for submittals: General Conditions and Supplementary Conditions.
  - (2) Individual submittals required: Pertinent sections of these specifications.

.02 PRODUCT HANDLING:

Make all submittals of Shop Drawings, samples, requests for substitutions, and other items in strict accordance with the provisions of this section of these specifications.

.03 SUBSTITUTIONS:

- a. Prior Approval Required:
  - (1) The Contract is based on the material and methods described in the Contract Documents. The material and products 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 unless written request for approval has been received by the Architect at least ten (10) days prior to the date of receipt of Bids. Such requests shall include the name of the material 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 or other portions of the 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) Those requesting Architect consideration of their products "equals" shall make such request in electronic PDF format providing space for Architect approval and/or comments on each item requested. An electronic PDF copy of the request form, with Architect action on same, will be returned to the proposer.

- (4) 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.
  - (5) No substitutions will be considered after the Contract award unless specifically provided in the Contract Documents. Under no condition shall Bids be submitted on work or materials not approved by the Architect for this specific project, even though approval might have been given on other projects previously.
- b. Or Equal:
- (1) Where the phrase "or equal" or "or approved equal" or "or equal as approved by the Architect" occurs in the Contract Documents, do not assume that material, equipment, or methods will be approved as equal by the Architect unless the item has been specifically approved for this work by the Architect in electronic PDF format prior to receipt of Bids by Addendum, all in accordance with procedure outlined in above paragraph .03a "Prior Approval Required".
  - (2) The decision of the Architect shall be final.
- c. Availability of Specified Items:
- (1) Verify, prior to bidding, that all specified items will be available in time for installation during orderly and timely progress of the work.
  - (2) In the event specified item or items will not be available, so notify the Architect prior to receipt of bids.
  - (3) Costs of delays because of non-availability of specified items, when such delays could have been avoided by the Contractor, will be backcharged as necessary and shall not be borne by the Owner.

.04 IDENTIFICATION OF SUBMITTALS:

Completely identify each submittal and resubmittal by showing at least the following information:

- a. Name and address of submitter, plus name and telephone number of the individual who may be contacted for further information.
- b. Name of project as it appears on each page of these Specifications.
- c. Pertinent drawing sheet and detail number(s), and specification section number, as appropriate, to which the submittal applies.
- d. Whether this is an original submittal or resubmittal.

05 COORDINATION OF SUBMITTALS:

- a. General: Prior to submittal for Architect's review, use all means necessary to fully coordinate all materials, including the following procedures:
- (1) Determine and verify all field dimensions and conditions, materials, catalog number and similar data.
  - (2) Coordinate, as required, with all trades and with all public agencies involved. Secure all necessary approvals from public agencies and others and signify by stamp, or other means, that they have been secured.
  - (3) Clearly indicate all deviations from the Contract Documents.
- b. Grouping of Submittals: Unless otherwise specifically permitted by the Architect, make all submittals in groups containing all associated items; the Architect may reject partial submittals as not complying with the provisions of the Contract Documents.
- c. Prior to submittal, Contractor shall apply Contractor's stamp, signed or initialed certifying that review, verification of products required, field dimensions, adjacent construction work, and coordination of information, is in accordance with the requirements of the Work and Contract Documents.
- d. Provide space for Contractor, Architect, and Owner review stamps.
- e. Revise and resubmit submittals as required, identify all changes made since previous submittal.
- f. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.

.06 TIMING OF SUBMITTALS:

- a. General:
- (1) Make all submittals far enough in advance of scheduled dates of installation to provide all required time for review, for securing necessary approvals, for possible revision and resubmittal, and for placing orders and securing delivery.
  - (2) In scheduling, allow at least ten (10) full working days for the Architect's review following his receipt of the submittal.
- b. Delays: Costs of delays occasioned by tardiness of submittals may be backcharged to the Contractor and shall not be borne by the Owner.

.07 SHOP DRAWINGS:

- a. Unless otherwise specifically directed by the Architect, submit newly prepared information drawn accurately to scale. Highlight, encircle, or otherwise indicate deviations from the contract documents. Do not reproduce contract documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the project is not a shop drawing. Contractor shall indicate on the shop drawing submittal that they have reviewed and approved it prior to forwarding it to the Architect for review.
- b. Shop drawings include fabrication and installation drawings, setting diagrams, schedules, patterns, templates and similar drawings. Include the following information:
  - (1) Dimensions.
  - (2) Identification of products and materials included by sheet and detail number.
  - (3) Compliance with specified standards.
  - (4) Notation of coordination requirements.
  - (5) Notation of dimensions established by field measurement.
- c. Type of Prints Required: Unless otherwise specifically directed by the Architect, submit all shop drawings with sheet sizes up to and including 11"x17" in electronic PDF format. Shop drawings with a sheet size larger than 11"x17" may be submitted either in an electronic PDF format or in the form of opaque reproductions. Original reproducible transparencies are not acceptable.
- d. Number of Prints Required: Submit one copy of electronic shop drawings. For opaque reproductions, submit the number of prints which the Contractor requires, plus five (5) copies which will be retained by the Architect.
- e. Distribution: After review and approval by Architect, Contractor shall provide and distribute all copies required for this purpose and as required by subcontractors, suppliers, manufacturers, installers, etc.

.08 SAMPLES:

- a. Accuracy of Sample: Unless otherwise specifically directed by the Architect, all samples shall be of the precise article proposed to be furnished and shall illustrate the functional and aesthetic characteristics of the product.
- b. Number of Samples Required: Submit all samples in the quantity which is required to be returned plus three (3) which will be retained by the Architect.

.09 COLORS:

- a. General: Unless the precise color and pattern is specifically described in the Contract Documents, whenever a choice of color or pattern is available in a specified product, submit accurate color charts and pattern charts from the full range of manufacturer's standards to the Architect for his review and selection.
- b. Comparative Analysis: Unless all available colors and patterns have identical costs and identical wearing capabilities, and are identically suited for the installation, completely describe the relative costs and capabilities of each.

.10 PROJECT RECORD DOCUMENTS:

- a. General:
- (1) Specific requirements for record documents are indicated in individual sections of these specifications. Other requirements are indicated in the General Conditions. General submittal requirements are indicated in the various "submittals" sections.
  - (2) Maintain on site, one set of the following record documents and record actual revisions to the Work:
    - (a) Contract Drawings.
    - (b) Specifications.
    - (c) Addenda.
    - (d) Change Orders and other Modifications to the Contract.
    - (e) Reviewed shop drawings, product data, and samples.
  - (3) Do not use record documents for construction purposes; protect from deterioration and loss in a secure, fire-resistive location; provide access to record documents for the Architect's reference during normal working hours.
- b. Record Drawings: The Contractor shall maintain a record set of blue line white-prints of contract drawings and shop drawings in clean, undamaged condition. All other subcontractors shall record work variations on the Contractor's record set. Mark-up the set of record documents to show the actual installation where the installed work varies from the work as originally shown. Mark whichever drawings are most capable of showing the actual "field" condition fully and accurately; however, where shop drawings are used for mark-up, record a cross reference at corresponding locations on the working drawings. Give particular attention to concealed work that would be difficult to measure and record at a later date.

- (1) Mark record set with red erasable pencil and, where feasible, use other colors to distinguish between variations in separate categories of work. Mark-up new information which is known to be important to the Owner but, for some reason, was not shown on either contract drawings or shop drawings.
  - (2) The Contractor shall, during the progress of the work, keep accurate data on locations and elevations of concealed work so that he may prepare a survey containing the final exact elevations and locations of all such work, especially that work for which an elevation or dimensional location is indicated and/or specified within the plans and/or specifications.
    - (a) Field changes of dimension and detail.
    - (b) Details not on original Contract Drawings.
  - (3) Note related change order numbers where applicable.
  - (4) Organize record drawing sheets into manageable sets, bind with durable paper cover sheets, and print suitable titles, dates, and other identification on the cover of each set. Submit to Architect.
- c. Record Specifications:
- (1) Legibly mark and record at each Product section description of actual Products installed, including the following:
    - (a) Manufacturer's name and product model and number.
    - (b) Product substitutions or alternates utilized.
    - (c) Changes made by Addenda and Modifications.
  - (2) Upon completion of mark-up, submit a complete record specification to Architect for Owner's records.
- d. Record Product Data:
- (1) Maintain one copy of each product data submittal. Mark these documents to show variations in the actual work performed in comparison with the submitted information. Include both variations in the products as delivered to the site, and variations from manufacturer's instructions and recommendations for installation. Give particular attention to concealed products and portions of the work which cannot otherwise be readily discerned at a later date by direct observation. Note related change orders and mark-up of record drawings and specifications.

- (2) Upon completion of mark-up, submit complete set of record product data to the Architect for the Owner's records.

e. Miscellaneous Record Submittals: Refer to other sections of these specifications for requirements of miscellaneous record-keeping and submittals in connection with the actual performance of the work. Immediately prior to the date or dates of substantial completion, complete miscellaneous records and place in good order, properly identified and bound or filed, ready for continued use and reference. Submit to the Architect for the Owner's records.

#### .11 MANUALS:

a. General: Unless otherwise specifically directed by the Architect elsewhere in the specifications, prepare all required manuals covering items included in this work in accordance with the following:

- (1) Operation and maintenance data shall be submitted electronically in PDF format on Read/Write (R/W) Compact Disks (CDs) formatted to allow the data to be read and copied to and from the CD. Each CD and its case shall be professionally labeled with printed title "OPERATION AND MAINTENANCE INSTRUCTIONS", title of project, and subject matter of CD.
  - (a) Provide a file folder containing a master index at beginning of each CD's electronic manual file structure showing items included. The CD shall be subdivided with file folders and subfolders logically organized and labeled to allow ease of access to the data.
  - (b) First section of each respective Contractors CD shall consist of directory listing names, addresses, and telephone numbers of Architect, Contractor, subcontractors, and major equipment suppliers.
  - (c) Provide file folders/subfolders for each type of equipment arranged in order similar to the specifications. All sections shall be clearly labeled on the CD. At beginning of each section provide suppliers name, address and phone numbers.
- (2) Descriptive Literature:
  - (a) Include descriptive literature (manufacturer's catalog and data) of each manufactured item.
  - (b) Copy of the approved Shop Drawing(s) with all data concerning changes made during construction.

b. Extraneous Data: Where contents of the electronic manuals include manufacturer's catalog pages, clearly indicate the precise items included in this installation and delete, or otherwise clearly indicate, all manufacturer's data with which this installation is not concerned.

c. Material Safety Data Sheets: Any materials installed that have an associated Material Safety Data Sheet (MSDS) shall be included in the maintenance manuals under a separate tab.

d. Number of Copies Required: The Contractor shall provide one copy of their electronic maintenance manual to the Architect for review. Unless otherwise specifically directed by the Architect, each Contractor shall deliver three (3) approved CDs to the Architect before final inspection.

.12 WARRANTIES:

a. Provide duplicate notarized copies.

b. Execute and assemble documents from subcontractors, suppliers, and manufacturers.

c. Provide Table of Contents and assemble in three (3) ring binder with durable plastic cover.

d. For items of Work delayed beyond date of Substantial Completion, provide updated submittal within ten (10) days after acceptance, listing date of acceptance as start of warranty period.



.01 SCOPE OF WORK:

a. Work Included: Temporary facilities and controls required for this Work include, but are not necessarily limited to:

- (1) Temporary utilities such as water, lighting and power and telephone.
- (2) Field office and storage sheds.
- (3) Sanitary facilities.
- (4) Enclosures such as tarpaulins, barricades and canopies.
- (5) Access roads and parking areas.

b. Except that all equipment furnished by subcontractors shall comply with all requirements of pertinent safety regulations, the ladders, planks, hoists, and similar items normally furnished by the individual trades in execution of their own portions of the Work are not part of this section.

.02 UTILITIES:

a. The Owner shall make all reasonably required amounts of water and power available to the Contractor from existing outlets and supplies unless otherwise specified herein. The Contractor shall carefully conserve any utilities furnished.

b. The Contractor shall be responsible for providing all heat sufficient to protect all work and materials prior to Owner's acceptance of Work. A minimum temperature of 50 degrees F. shall be maintained in spaces (construction shelters, building enclosures, etc.) involved at all times during placing, setting and curing of concrete and masonry materials.

.03 TELEPHONE:

The Contractor shall provide a temporary telephone (cellular is acceptable) for the entire construction period.

.04 FIELD OFFICE AND STORAGE:

a. Temporary field offices and/or storage buildings are not a requirement for this project, however, the Owner has no objection to Contractor providing and maintaining such structures on the project site. Remove same when work is complete.

b. Expenses for all utilities, services, equipment and furnishings for each temporary field office and/or storage building shall be the responsibility of the Contractor.

.05 FIELD TOILET:

The Contractor shall provide and maintain field toilet(s) as necessary for use of all workers and in sufficient numbers for each sex. These shall be located where expedient and maintained in strict sanitary condition.

.06 ENCLOSURES:

Furnish, install and maintain for the duration of construction all required scaffolds, tarpaulins, barricades, canopies, warning signs, steps, bridges, platforms, safety nets and all other temporary construction or devices necessary for proper completion of the Work in compliance with all safety and other regulations.

.07 ACCESS ROADS AND PARKING AREAS:

The Contractor shall utilize the access roads and parking areas designated by the owner. Site usage and traffic shall be in strict accordance with all regulations governing the Contractor's use of the site.

.08 MAINTENANCE AND REMOVAL:

Maintain all temporary facilities and controls as long as needed for the safe and proper completion of the Work. Remove all such temporary facilities and controls as rapidly as progress of the Work will permit, or as directed by the Architect. Restore permanent facilities used during construction to specified condition.

.01 SCOPE OF WORK:

- a. Throughout the construction period, maintain the building and site in a standard of cleanliness as described in this Section.
- b. In addition to standards described in this Section, comply with requirements for cleaning as described in pertinent other sections of these specifications.

.02 QUALITY ASSURANCE:

- a. Conduct daily inspection, and more often if necessary, to verify that requirements for cleanliness are being met.
- b. In addition to the standards described in this Section, comply with pertinent requirements of governmental agencies having jurisdiction.

.03 CLEANING MATERIALS AND EQUIPMENT:

- a. Provide required personnel, equipment, and material needed to maintain the specified standard of cleanliness.
- b. Use only the cleaning materials and equipment which are compatible with the surface being cleaned as recommended by the manufacturer of the material.

.04 PROGRESS CLEANING:

- a. General:
  - (1) Retain stored items in an orderly arrangement allowing maximum access, not impeding traffic or drainage and providing required protection of material.
  - (2) Do not allow accumulation of scrap, debris, waste material and other items not required for construction of this Work.
  - (3) At least once each week, and more often if necessary, completely remove all scrap, debris and waste material from the job site.
  - (4) Provide adequate storage for all items awaiting removal from the job site, observing requirements for fire protection and protection of the ecology.
- b. Site:
  - (1) Daily, and more often if necessary, inspect the site and pick up all scrap, debris and waste material. Remove such items to the place designated for their storage.

- (2) Weekly, and more often if necessary, inspect all arrangement of material stored on the site. Restack, tidy, or otherwise service arrangements to meet the requirements of subparagraph .04.a.(1) above.
  - (3) Maintain the site in a neat and orderly condition at all times. Weekly, and more often if necessary, remove waste materials, debris, and rubbish from site and dispose of in an acceptable manner.
- c. Building:
- (1) Daily, and more often if necessary, inspect the structure and pick up all scrap, debris and waste material. Remove such items to the place designated for their storage.
  - (2) As required, preparatory to installation of succeeding material, clean the structure or pertinent portions to the degree of cleanliness recommended by the manufacturer of the succeeding material, using equipment and material required to achieve the necessary cleanliness.
- d. Architect shall be sole judge as to cleaning responsibility in case of dispute.

.05 FINAL CLEANING:

- a. Contractor shall have overall responsibility for all final cleaning requirements unless otherwise specifically indicated.
- b. "Clean", for the purpose of this Article, and except as may be specifically provided otherwise, shall be interpreted as meaning the level of cleanliness generally provided by skilled cleaners using commercial quality building maintenance equipment and material. Comply with all manufacturer's instructions/recommendations regarding cleaning operations.
- c. Prior to completion of the Work, Contractor shall remove from the job site all tools, surplus material, equipment, scrap, debris and waste; and conduct final progress cleaning as described in paragraph .04 above.
- d. Building:
  - (1) Exterior:
    - (a) Visually inspect exterior surfaces and remove all traces of soil, waste material, smudges, and other foreign matter.
    - (b) Remove all traces of splashed material from adjacent surfaces.
    - (c) If necessary to achieve a uniform degree of cleanliness, hose down the exterior of the structure.

- (d) In the event of stubborn stains not removable with water, the Architect may require light sandblasting or other cleaning at no additional cost to the Owner.
- e. Schedule final cleaning as approved by the Architect to enable the Owner to accept a completely clean Work.
- f. Architect shall be sole judge as to final cleaning responsibilities in case of dispute.



.01 DESCRIPTION:

Closeout is hereby defined to include general requirements of Contractor near end of Contract Time in preparation for final acceptance, final payment, normal termination of contract, occupancy by Owner and similar actions evidencing completion of the Work. Specific requirements for individual units of work are specified in relative sections of these specifications. Time of closeout is directly related to "Substantial Completion" and, therefore, may be either a single time period for entire work or a series of time periods for individual parts of the work which have been certified as substantially complete at different dates. That time variation shall be applicable to other provisions of this section.

.02 QUALITY ASSURANCE:

Prior to requesting inspection by the Architect, use adequate means to assure that the Work is completed in accordance with the specified requirements and is ready for the requested inspection.

.03 PROCEDURES:a. Substantial Completion:

- (1) Contractor will submit a written request to the Architect along with a list of ALL items to be completed and/or corrected.
- (2) Within a reasonable time after receipt of the list, the Architect will either proceed with inspection or advise Contractor of prerequisites not fulfilled.
- (3) Following the initial inspection, should the Architect determine that the Work is not substantially complete:
  - (a) The Architect will promptly notify the Contractor, in writing, giving the reasons therefore.
  - (b) The Contractor will remedy the deficiencies and notify the Architect when ready for reinspection.
  - (c) The Architect will reinspect the Work when assured that the work has been substantially completed.
- (4) When the Architect concurs that the Work is substantially complete:
  - (a) The Owner will prepare a "Certificate of Substantial Completion" on AIA Document G704, accompanied by the Architect's final inspection report and submit to all parties concerned for their written acceptance of the responsibilities assigned to them in the Certificate.

- (5) Certificate of Substantial Completion will identify initial "punchlist" for final acceptance.

b. Final Completion:

- (1) Prior to requesting Architect's final re-inspection for certification of final acceptance, assure that all items on Architect's final "punchlist" have been completed, corrected, or otherwise resolved for acceptance.
- (2) Submit copy of Architect's final punchlist of itemized work to be completed or corrected, stating that each item has been completed or otherwise resolved for acceptance.
- (3) Certify that:
  - (a) Contract Documents have been reviewed.
  - (b) Work has been inspected for compliance with the Contract Documents.
  - (c) Work has been completed in accordance with the Contract Documents.
  - (d) Work is completed and ready for final inspection.
- (4) The Architect will make an inspection to verify status of completion.
- (5) Should the Architect determine that the Work is incomplete or defective:
  - (a) The Architect will promptly notify the Contractor, in writing, listing the incomplete or defective work.
  - (b) The Contractor shall remedy the deficiencies promptly, and notify the Architect when ready for inspection.
- (6) When the Architect determines that the Work is acceptable under the Contract Documents, he will request the Contractor to make closeout submittals.

c. Closeout Submittals and Actions: Closeout submittals and actions include, but are not necessarily limited to:

- (1) All items specifically required under Paragraph 9.10.6 of the Supplementary General Conditions (AGND Document 415).
- (2) Evidence of final, continuing insurance coverage complying with insurance requirements. Include certificate of insurance for products and completed operations where required. Advise Owner of pending insurance change-over requirements.



- (3) Final liquidated damages settlement statement (if any), acceptable to Owner.
- (4) Specific warranties, workmanship/maintenance bonds, maintenance agreements, final certifications and similar documents.
- (5) Evidence of compliance with requirements of governmental agencies having jurisdiction for Certificates of Inspection. Obtain and submit release enabling Owner's full and unrestricted use of the work and access to services and utilities.
- (6) Submit maintenance manuals and similar final record information. See Specification Section 01300.
- (7) Complete final cleaning-up requirements, including touch-up, repair and/or restoration of marred surfaces. See Specification Section 01600.
- (8) Discontinue (or change over) and remove from project site temporary facilities and services, along with construction tools and facilities and similar elements.

.04 FINAL PAYMENT:

Neither the final payment nor the remaining retained percentage shall become due until Contractor completes all the above requirements of this specification section.

END OF SECTION 01700



## **SECTION 07 9200**

### **JOINT SEALANTS**

#### **PART 1 GENERAL**

##### **1.01 SECTION INCLUDES**

- A. Nonsag gunnable joint sealants.
- B. Self-leveling pourable joint sealants.
- C. Joint backings and accessories.

##### **1.02 REFERENCE STANDARDS**

- A. ASTM C661 - Standard Test Method for Indentation Hardness of Elastomeric-Type Sealants by Means of a Durometer; 2006 (Reapproved 2011).
- B. ASTM C920 - Standard Specification for Elastomeric Joint Sealants; 2014.
- C. ASTM C1193 - Standard Guide for Use of Joint Sealants; 2013.

##### **1.03 SUBMITTALS**

- A. See Section 01300 - Submittals and Substitutions, for submittal procedures.
- B. Product Data for Sealants: Submit manufacturer's technical data sheets for each product to be used, that includes the following.
  - 1. Physical characteristics, including movement capability, VOC content, hardness, cure time, and color availability.
  - 2. List of backing materials approved for use with the specific product.
  - 3. Substrates that product is known to satisfactorily adhere to and with which it is compatible.
  - 4. Substrates the product should not be used on.
- C. Submit Color Samples that actually represent the product, this will be in addition to the printed color sheets.

##### **1.04 QUALITY ASSURANCE**

- A. Manufacturer Qualifications: Company specializing in manufacturing the products specified in this section with minimum five (5) years documented experience.
- B. Installer Qualifications: Company specializing in performing the work of this section with minimum three years documented experience and with minimum five (5) years documented experience.

##### **1.05 WARRANTY**

- A. See Section 01300 - Submittals and Substitutions, for additional warranty requirements.
- B. Correct defective work within a five year period after date of Substantial Completion.
- C. Warranty: Include coverage for installed sealants and accessories that fail to achieve watertight seal, exhibit loss of adhesion or cohesion, or do not cure.

#### **PART 2 PRODUCTS**

##### **2.01 MANUFACTURERS**

- A. The following manufacturers are acceptable for the products specified for each type of sealant.
  - 1. Adhesives Technology Corporation: [www.atcepoxy.com](http://www.atcepoxy.com).
  - 2. BASF Construction Chemicals-Building Systems: [www.buildingsystems.basf.com](http://www.buildingsystems.basf.com).
  - 3. Bostik Inc: [www.bostik-us.com](http://www.bostik-us.com).
  - 4. Dow Corning Corporation: [www.dowcorning.com](http://www.dowcorning.com).
  - 5. Fortifiber Building Systems Group: [www.fortifiber.com](http://www.fortifiber.com).
  - 6. Franklin International, Inc.: [www.titebond.com](http://www.titebond.com).
  - 7. Hilti, Inc: [www.us.hilti.com](http://www.us.hilti.com).
  - 8. Momentive Performance Materials, Inc (formerly GE Silicones): [www.momentive.com](http://www.momentive.com).
  - 9. Pecora Corporation: [www.pecora.com](http://www.pecora.com).

10. The QUIKRETE Companies: [www.quikrete.com](http://www.quikrete.com).
11. Tremco Global Sealants: [www.tremcosealants.com](http://www.tremcosealants.com).
12. Sherwin-Williams Company: [www.sherwin-williams.com](http://www.sherwin-williams.com).
13. Sika Corporation: [www.usa-sika.com](http://www.usa-sika.com).
14. W.R. Meadows, Inc: [www.wrmeadows.com](http://www.wrmeadows.com).
15. Substitutions: See Section 01300 - Submittals and Substitutions, for submittal procedures.

## 2.02 JOINT SEALANT APPLICATIONS

- A. Scope:
1. Exterior Joints: Seal open joints, whether or not the joint is indicated on the drawings, unless specifically indicated not to be sealed. Exterior joints to be sealed include, but are not limited to, the following items.
    - a. Wall expansion and control joints.
    - b. Joints between door, window, and other frames and adjacent construction.
    - c. Joints between louvers, grills and adjacent construction.
    - d. Joints between different exposed materials.
    - e. Joints around precast and masonry sills and decorative banding.
    - f. The transition joint between the building and the adjacent sidewalk, paving, or surfacing. Self-leveling sealant should be used at these locations.
    - g. Joints in concrete sidewalks and transitions to concrete stoops. Self-leveling sealant should be used at these locations.
    - h. Other joints indicated below.
  2. Do not seal the following types of joints.
    - a. Intentional weepholes in masonry.
    - b. Joints indicated to be treated with manufactured expansion joint cover or some other type of sealing device.
    - c. Joints where sealant is specified to be provided by manufacturer of product to be sealed.
- B. Exterior Joints: Use nonsag non-staining silicone sealant, unless otherwise indicated.

## 2.03 JOINT SEALANTS - GENERAL

- A. Sealants and Primers of each type shall be from one manufacturer.
- B. Primers shall be as recommend by sealant manufacturer.
- C. Compatibility: Provide joint sealants, backings, and other related materials that are compatible with one another and with joint substrates under conditions of services and application, as demonstrated by sealant manufacturers based on testing and field experience.

## 2.04 NONSAG JOINT SEALANTS

- A. Polyurethane Sealant: ASTM C920, Grade NS, Uses M and A; multicomponent; not expected to withstand continuous water immersion or traffic.
1. Product must be designed for vertical surfaces.
  2. Movement Capability: Plus and minus 50 percent, minimum.
  3. Hardness Range: 20 to 35, Shore A, when tested in accordance with ASTM C661.
  4. Color: Match adjacent finished surfaces. Several colors will be selected, for each type of application the same color will be used. Coordinate colors selected with Owner and Architect.
  5. Paintable with oil, water, and rubber based paints.
  6. Service Temperature Range: -40 degrees F to 170 degrees F.
  7. Products:
    - a. Pecora Corporation; DynaTrol II General Purpose Two Part Polyurethane Sealant: [www.pecora.com](http://www.pecora.com).
    - b. The QUIKRETE Companies; QUIKRETE® Polyurethane Non-Sag Sealant: [www.quikrete.com](http://www.quikrete.com).
    - c. Sherwin-Williams Company; Stampede 2NS Polyurethane Sealant: [www.sherwin-williams.com](http://www.sherwin-williams.com).
    - d. Sika Corportaion; Sikaflex-2C NS EZ Mix: [www.usa-sika.com](http://www.usa-sika.com)

- e. Similar products from the manufactures listed in 2.01, A will be acceptable.
- f. Substitutions: See Section 01300 - Submittals and Substitutions, for submittal procedures.

## **2.05 SELF-LEVELING SEALANTS**

- A. Use this type of sealant only at exterior, on grade, horizontal applications.
- B. Self-Leveling Polyurethane Sealant: ASTM C920, Grade P, Uses M and A; multicomponent; explicitly approved by manufacturer for traffic exposure; not expected to withstand continuous water immersion.
  - 1. Adheres to concrete and other construction surfaces without priming.
  - 2. Movement Capability: Plus and minus 50 percent, minimum.
  - 3. Color: Gray.
  - 4. Products:
    - a. Pecora Corporation; NR-200 Self-Leveling Traffic-Grade Polyurethane Sealant: [www.pecora.com](http://www.pecora.com).
    - b. The QUIKRETE Companies; QUIKRETE® Polyurethane Self-Leveling Sealant: [www.quikrete.com](http://www.quikrete.com).
    - c. Sherwin-Williams Company; Stampede 2SL Polyurethane Sealant: [www.sherwin-williams.com](http://www.sherwin-williams.com).
    - d. Sika Corporation; Sikaflex-2c SL: [www.usa-sika.com](http://www.usa-sika.com).
    - e. Similar products from the manufactures listed in 2.01, A will be acceptable.
    - f. Substitutions: See Section 01300 - Submittals and Substitutions, for submittal procedures.

## **2.06 ACCESSORIES**

- A. Backer Rod: Cylindrical cellular foam rod with surface that sealant will not adhere to, compatible with specific sealant used, and recommended by backing and sealant manufacturers for specific application. Contractor to use open or closed cell backer rod based on manufacturers recommendation for each type of sealant and joint application.
  - 1. The backer rod shall be one size larger than the joint opening.
  - 2. Open Cell: 40 to 50 percent larger in diameter than joint width.
  - 3. Closed Cell and Bi-Cellular: 25 to 33 percent larger in diameter than joint width.
- B. Backing Tape: Self-adhesive polyethylene tape with surface that sealant will not adhere to and recommended by tape and sealant manufacturers for specific application.
- C. Masking Tape: Self-adhesive, nonabsorbent, non-staining, removable without adhesive residue, and compatible with surfaces adjacent to joints and sealants.
- D. Joint Cleaner: Non-corrosive and non-staining type, type recommended by sealant manufacturer; compatible with joint forming materials.
- E. Primers: Type recommended by sealant manufacturer to suit application; non-staining.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Verify that joints are ready to receive work.
- B. Verify that backing materials are compatible with sealants.
- C. Verify that backer rods are of the correct size.

### **3.02 PREPARATION**

- A. Cut out all existing sealant and backer rod. Removal shall be performed in such manner as to provide a smooth and clean joint for the installation of new backer rod and sealant.
- B. Remove loose materials and foreign matter that could impair adhesion of sealant.
- C. Clean joints, and prime as necessary, in accordance with manufacturer's instructions.
- D. Perform preparation in accordance with manufacturer's instructions and ASTM C1193.
- E. Mask elements and surfaces adjacent to joints from damage and disfigurement due to sealant work; be aware that sealant drips and smears may not be completely removable.

### **3.03 INSTALLATION**

- A. Perform work in accordance with sealant manufacturer's requirements for preparation of surfaces and material installation instructions.
- B. Perform installation in accordance with ASTM C1193.
- C. Install bond breaker backing tape where backer rod cannot be used.
- D. Install sealant free of air pockets, foreign embedded matter, ridges, and sags, and without getting sealant on adjacent surfaces.
- E. Do not install sealant when ambient temperature is outside manufacturer's recommended temperature range, or will be outside that range during the entire curing period, unless manufacturer's approval is obtained and instructions are followed.
- F. Nonsag Sealants: Tool surface concave, unless otherwise indicated; remove masking tape immediately after tooling sealant surface.
- G. Finished appearance of surfaces shall be smooth, uniform beads with no visible air pockets and sufficient contact and adhesion to the surfaces of the joint being sealed.
- H. Clean and remove excess sealants from surfaces adjacent to the joint that are not to receive sealant. Cleaning shall be performed in a timely manner and method as recommended by the manufacturer to prevent staining and damage to surfaces.

**END OF SECTION**

## **SECTION 09 9113 EXTERIOR PAINTING**

### **PART 1 GENERAL**

#### **1.01 SECTION INCLUDES**

- A. Surface preparation.
- B. Field application of paints.
- C. Scope: Finish exterior surfaces exposed to view, unless fully factory-finished and unless otherwise indicated.

#### **1.02 REFERENCE STANDARDS**

- A. ASTM D16 - Standard Terminology for Paint, Related Coatings, Materials, and Applications; 2014.
- B. ASTM D4258 - Standard Practice for Surface Cleaning Concrete for Coating; 2005 (Reapproved 2012).
- C. ASTM D4259 - Standard Practice for Abrading Concrete; 1988 (Reapproved 2012).
- D. MPI (APSM) - Master Painters Institute Architectural Painting Specification Manual; current edition, [www.paintinfo.com](http://www.paintinfo.com).
- E. SSPC V1 (PM1) - Good Painting Practice: Painting Manual, Volume 1; Society for Protective Coatings; Fourth Edition.
- F. SSPC-SP 1 - Solvent Cleaning; 2015.
- G. SSPC-SP 2 - Hand Tool Cleaning; 1982 (Ed. 2004).
- H. SSPC-SP 6 - Commercial Blast Cleaning; Society for Protective Coatings; 2007.
- I. SSPC-SP 13 - Surface Preparation of Concrete; Society for Protective Coatings; 2003 (Reaffirmed 2015).

#### **1.03 SUBMITTALS**

- A. See Section 01300 - Submittals & Substitutions.

#### **1.04 QUALITY ASSURANCE**

- A. Manufacturer Qualifications: Company specializing in manufacturing the products specified, with minimum three years documented experience.

#### **1.05 DELIVERY, STORAGE, AND HANDLING**

- A. Deliver products to site in sealed and labeled containers; inspect to verify acceptability.
- B. Container Label: Include manufacturer's name, type of paint, brand name, lot number, brand code, coverage, surface preparation, drying time, cleanup requirements, color designation, and instructions for mixing and reducing.
- C. Paint Materials: Store at minimum ambient temperature of 45 degrees F (7 degrees C) and a maximum of 90 degrees F (32 degrees C), in ventilated area, and as required by manufacturer's instructions.

#### **1.06 FIELD CONDITIONS**

- A. Do not apply materials when surface and ambient temperatures are outside the temperature ranges required by the paint product manufacturer.
- B. Follow manufacturer's recommended procedures for producing best results, including testing of substrates, moisture in substrates, and humidity and temperature limitations.
- C. Do not apply exterior paint and finishes during rain or snow, or when relative humidity is outside the humidity ranges required by the paint product manufacturer.

## **PART 2 PRODUCTS**

### **2.01 MANUFACTURERS**

- A. Provide paints and finishes used in any individual system from the same manufacturer.
- B. Paints:
  - 1. Benjamin Moore & Co: [www.benjaminmoore.com](http://www.benjaminmoore.com).
  - 2. Diamond Vogel Paints: [www.diamondvogel.com](http://www.diamondvogel.com).
  - 3. PPG Paints: [www.ppgpaints.com](http://www.ppgpaints.com).
  - 4. Pratt & Lambert Paints: [www.prattandlambert.com](http://www.prattandlambert.com).
  - 5. Sherwin-Williams Company: [www.sherwin-williams.com](http://www.sherwin-williams.com).
  - 6. Valspar Corporation: [www.valsparpaint.com](http://www.valsparpaint.com).
  - 7. Substitutions: See Section 01300 - Submittals & Substitutions.
- C. Primer Sealers: Same manufacturer as top coats.

### **2.02 PAINTS AND FINISHES - GENERAL**

- A. Paints and Finishes: Ready mixed, unless required to be a field-catalyzed paint.
  - 1. Provide paints and finishes of a soft paste consistency, capable of being readily and uniformly dispersed to a homogeneous coating, with good flow and brushing properties, and capable of drying or curing free of streaks or sags.
  - 2. Provide materials that are compatible with one another and the substrates indicated under conditions of service and application, as demonstrated by manufacturer based on testing and field experience.
  - 3. For opaque finishes, tint each coat including primer coat and intermediate coats, one-half shade lighter than succeeding coat, with final finish coat as base color.
  - 4. Supply each paint material in quantity required to complete entire project's work from a single production run.
  - 5. Do not reduce, thin, or dilute paint or finishes or add materials unless such procedure is specifically described in manufacturer's product instructions.
- B. Flammability: Comply with applicable code for surface burning characteristics.
- C. Sheens: Provide the sheens specified; where sheen is not specified, sheen will be selected later by Architect from the manufacturer's full line.
- D. Colors: To be selected from manufacturer's full range of available colors.

### **2.03 ACCESSORY MATERIALS**

- A. Accessory Materials: Provide primers, sealers, cleaning agents, cleaning cloths, sanding materials, and clean-up materials as required for final completion of painted surfaces.
- B. Patching Material: Latex filler.
- C. Fastener Head Cover Material: Latex filler.

### **2.04 CONCRETE REPAIR MORTAR**

- A. Concrete Repair Mortar: to be used to patch the tops of precast concrete tees to repair damaged edges. Patch concrete prior to painting per manufacturer's recommendations.
- B. Approved Manufacturers:
  - 1. Eucopatch by Euclid Chemical: [www.euclidchemical.com](http://www.euclidchemical.com)
  - 2. Nox-crete: [www.nox-crete.com](http://www.nox-crete.com)
  - 3. V/O Patch by US Spec: [www.usspec.com](http://www.usspec.com)
  - 4. Substitutions: See Section 01300 - Submittals & Substitutions
- C. Install primer prior to using concrete repair mortar as recommended by the manufacturer.



## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Do not begin application of paints and finishes until substrates have been properly prepared.
- B. Verify that surfaces are ready to receive work as instructed by the product manufacturer.
- C. Examine surfaces scheduled to be finished prior to commencement of work. Report any condition that may potentially effect proper application.
- D. Test shop-applied primer for compatibility with subsequent cover materials.

### **3.02 PREPARATION**

- A. Clean surfaces thoroughly and correct defects prior to application.
- B. Prepare surfaces using the methods recommended by the manufacturer for achieving the best result for the substrate under the project conditions.
- C. Remove or repair existing paints or finishes that exhibit surface defects.
- D. Remove or mask surface appurtenances, including electrical plates, hardware, light fixture trim, escutcheons, and fittings, prior to preparing surfaces for finishing. Remove and reinstall surface appurtenances wherever possible and mask only when removal and reinstallation is not practical.
- E. Seal surfaces that might cause bleed through or staining of topcoat.
- F. Remove mildew from impervious surfaces by scrubbing with solution of tetra-sodium phosphate and bleach. Rinse with clean water and allow surface to dry.
- G. Concrete:
  - 1. Remove release agents, curing compounds, efflorescence, and chalk. Do not coat surfaces if moisture content or alkalinity of surfaces to be coated exceeds that permitted in manufacturer's written instructions.
  - 2. Clean surfaces with pressurized water. Use pressure range of 1500 to 4000 psi (10,350 to 27,580 kPa) at 6 to 12 inches (150 to 300 mm). Allow to dry.
  - 3. Clean concrete according to ASTM D4258. Allow to dry.
  - 4. Prepare surface as recommended by top coat manufacturer and according to SSPC-SP 13.
- H. Aluminum: Remove surface contamination and oils and wash with solvent according to SSPC-SP 1.
- I. Galvanized Surfaces:
  - 1. Remove surface contamination and oils and wash with solvent according to SSPC-SP 1.
  - 2. Prepare surface according to SSPC-SP 2.
- J. Ferrous Metal:
  - 1. Solvent clean according to SSPC-SP 1.
  - 2. Shop-Primed Surfaces: Sand and scrape to remove loose primer and rust. Feather edges to make touch-up patches inconspicuous. Clean surfaces with solvent. Prime bare steel surfaces. Re-prime entire shop-primed item.
  - 3. Remove rust, loose mill scale, and other foreign substances using methods recommended in writing by paint manufacturer and blast cleaning according to SSPC-SP 6 "Commercial Blast Cleaning". Protect from corrosion until coated.
- K. Metal Doors to be Painted: Prime metal door top and bottom edge surfaces.

### **3.03 APPLICATION**

- A. Apply products in accordance with manufacturer's written instructions and recommendations in "MPI Architectural Painting Specification Manual".
- B. Do not apply finishes to surfaces that are not dry. Allow applied coats to dry before next coat is applied.
- C. Apply each coat to uniform appearance.

- D. Dark Colors and Deep Clear Colors: Regardless of number of coats specified, apply additional coats until complete hide is achieved.
- E. Sand wood and metal surfaces lightly between coats to achieve required finish.
- F. Vacuum clean surfaces of loose particles. Use tack cloth to remove dust and particles just prior to applying next coat.
- G. Reinstall electrical cover plates, hardware, light fixture trim, escutcheons, and fittings removed prior to finishing.

### 3.04 CLEANING

- A. Collect waste material that could constitute a fire hazard, place in closed metal containers, and remove daily from site.

### 3.05 PROTECTION

- A. Protect finishes until completion of project.
- B. Touch-up damaged finishes after Substantial Completion.

### 3.06 SCHEDULE - PAINT SYSTEMS

- Type 1     Exterior Precast Concrete with Smooth Surfaces
  - Clean wall surface with "Extra Muscle Cleaner" by Great Lakes Laboratories, Buckeye, or equal.
  - Rinse with power washer and water blaster tip to remove all loose paint and chalking. Once wall has dried, hand tool clean at areas that appear to have loose paint.
  - Apply Loxon Conditioner A24 Series to areas where paint has been flacking and removed. Contractor to assume 10% of wall area requires this treatment.
  - Apply two (2) coats of Sherlastic Elastomeric Coating A5W151 4-6 DFT or equal.
  - Product may be applied by brush, roller, or sprayer. If applied by sprayer, product must be back-rolled in addition to spraying.
- Type 2     Interior and Exterior Metal - Alkyd Enamel Eggshell:

All hollow metal doors and frames, sidelight frames and panels, exposed structural steel, metal louvers, exposed electrical conduit and boxes, exposed mechanical work, metal pipes, lintels and all other exposed finished and unfinished metal shall be given:

  - One (1) coat of Rust Inhibitive Primer
  - One (1) coat Metalastic DTM Acrylic Enamel or equal undercoating
  - One (1) coat Metalastic DTM Acrylic Enamel or equal Eggshell

**END OF SECTION**